

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, JUNE 14, 2023, 10:00 A.M., CT**

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**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, JUNE 14, 2023, 10:00 A.M., CT**

**Board
Members:**

Motion Sheet

Please note times:

Call To Order: _____

Executive Session _____

Regular Session _____

Adjournment _____

Jeff Erickson

(STAFF RECOMMENDATIONS)

Matt Judson **Agenda**

Motion to approve the agenda as presented.

**Sharon
Casey**

Motion made by _____ and seconded by _____.

Mike Luken

Minutes

**Don
Kettering** Motion to approve the minutes of the meeting held May 10, 2023, May 30, 2023 and June 6, 2023, as presented

Tom Jones

Motion made by _____ and seconded by _____.

Reed Kessler

Conflicts of Interest Disclosures

Joy Nelson

Public Comments

Eric Yunag

**Kevin
Tetzlaff** **Casey Peterson, LTD Accounting Contract**

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

David Emery

Motion made by _____ and seconded by _____.

**Craig
Christianson**

Commissioners Comments

Non-Voting

Executive Session

**Senator
Reynold
Nesiba** 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

**Senator
Casey
Crabtree**

Motion made by _____ and seconded by _____.

**Representative
Will Mortenson**

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.

**Representative
Kameron
Nelson**

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

Motion made by _____ and seconded by _____.

Reviews

Grant Reviews

Local Infrastructure Improvement Program (Clark County) and Reinvestment Payment Program (Blooming Valley Dairy, LLC, Dakota Range III, LLC, Red's All Natural, LLC,

Royal Canin, US, SFP, LLC, Sweetland Wind Farm, LLC, Valley Queen Cheese Factory and Wild Springs Solar, LLC

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

Motion made by _____ and seconded by _____.

Loan Reviews

SSM, LLC

Motion to approve the loan review and recommendation as presented.

Motion made by _____ and seconded by _____.

Old Business

Clark County

Motion to approve an extension of the grant agreement to June 9, 2025.

Motion made by _____ and seconded by _____.

Driftwood Dairy

Motion to approve an extension of the grant agreement to June 12, 2024.

Motion made by _____ and seconded by _____.

North Sioux City Economic Development Corporation

Motion to approve accepting the conditions and proposal as presented by staff and approving the amended commitment letter.

Motion made by _____ and seconded by _____.

Sioux Falls Development Foundation

Motion to approve an extension of the grant agreement to September 8, 2023.

Motion made by _____ and seconded by _____.

New Business

SD Works

Blankenship Painting, Inc.

Motion to approve a SD Works loan request from Blankenship Painting, Inc. in the amount of \$67,500. Secured by a second on financed assets, blanket UCC filling and 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 _____.

REDI

M.A. Murphy, LLC

Motion to approve a REDI loan request from M.A. Murphy, LLC in the amount of \$969,741. Secured by a shared first lien position, personal guarantees from principals with 10% or more ownership and corporate guarantees.

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 _____.

SD Works

Custom Skirting, LLC

Motion to approve a SD Works loan request from Blankenship Painting, Inc. in the amount of \$320,000. Secured by a sole 1st position on equipment, 2nd lien position on building and real estate and 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 _____.

Reinvestment Payment Program

SFP, LLC

Motion to approve the Reinvestment Payment Program grant application to SFP, LLC as recommended by staff.

Based on the representations and project description contained in the application for reinvestment payment, including but not limited to the representations concerning jobs created or retained and wages and benefits to be paid, a new or expanded facility reinvestment payment of \$612,900 but not to exceed 100% percent of State Sales/Use Tax paid on eligible project costs, is approved for SFP, LLC. The project as completed must be substantially similar to the project described in the application and must comply with the deadlines set out SDCL Ch. 1-16G and ARSD Ch. 68:02:07. The board has considered the factors set out in SDCL 1-16G-59 and ARSD 68:02:07:04 and the likelihood the project would not be located in South Dakota absent the reinvestment payment. Staff is authorized to issue a permit consistent with the application, this approval and the applicable provisions of SDCL Ch. 1-16G and ARSD Ch. 68:02:07.

Motion made by _____ and seconded by _____.

Wilson Trailer Company

Motion to approve the Reinvestment Payment Program grant application to Wilson Trailer Company as recommended by staff.

Based on the representations and project description contained in the application for reinvestment payment, including but not limited to the representations concerning jobs created or retained and wages and benefits to be paid, a new or expanded facility reinvestment

payment of \$104,000 but not to exceed 20% percent of State Sales/Use Tax paid on eligible project costs, is approved for Wilson Trailer Company. The project as completed must be substantially similar to the project described in the application and must comply with the deadlines set out SDCL Ch. 1-16G and ARSD Ch. 68:02:07. The board has considered the factors set out in SDCL 1-16G-59 and ARSD 68:02:07:04 and the likelihood the project would not be located in South Dakota absent the reinvestment payment. Staff is authorized to issue a permit consistent with the application, this approval and the applicable provisions of SDCL Ch. 1-16G and ARSD Ch. 68:02:07.

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 14, 2023, 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
<https://state-sd.zoom.us/j/96677988449?pwd=S1I2bW5wRkd6OWJmVjUza0N2K1pDQT09>
[www.zoom.com](https://state-sd.zoom.us/j/96677988449?pwd=S1I2bW5wRkd6OWJmVjUza0N2K1pDQT09) 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 10, 2023, May 30, 2023 and June 6, 2023, 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.
- 10:20 A.M. **Commissioner's Comments**
- 10:25 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
- 11:25 A.M. **Report from Executive Session**
RECOMMENDED ACTION: Approve Chairman's report from Executive Session.
- Other Motions**
 Grant Reviews
 Loan Review
 Clark County
 Driftwood Dairy
 North Sioux City Economic Development Corporation
 Sioux Falls Development Foundation
 Blankenship Painting, Inc.
 M.A. Murphy, LLC
 Custom Skirting, LLC
 Reinvestment Payment Program
 SFP, LLC

Wilson Trailer Company

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 10, 2023, 10:00 A.M., CT**

Members Present

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

Staff Present

Commissioner Steve Westra, Deputy Commissioner Chris Schilken, Travis Dovre, Ashley Moore, Jack Valentine, Nick Rabern, Nadine Agneau, Stephanie Deyo, Dale Knapp, Ann Gesick-Johnson, Curtis Egan, and Joe Fiala

Other Staff Present

Shawn Hofer – BankWest, Inc.

Others Present

Bob Mercer – Keloland

Call to Order

Chairman Erickson called the meeting to order at 10:01 a.m.

Agenda

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

Motion passed by a voice vote.

Minutes

A motion was made by Joy Nelson and seconded by Don Kettering to approve the minutes of the meetings held April 12, 2023 and May 1, 2023, 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. There were none from board members and no objection to proceeding with the agenda.

Public Comments – none

Committee Approvals

A motion was made by Mike Luken and seconded by Sharon Casey to accept the appointment of Tom Jones to Grant Committee.

Motion passed by a voice vote.

Executive Session

A motion was made by Mike Luken and seconded by Kevin Tetzlaff to enter into Executive Session at 10:08 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 10:22 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. No action was taken.

A motion was made by Mike Luken and seconded by Sharon Casey to approve the Chairman's report from Executive Session.

Motion passed by a voice vote.

Old Business

Watertown Development Company

A motion was made by Tom Jones and seconded by Reed Kessler to approve a commitment extension to November 10, 2023.

Motion passed by a voice vote.

New Business

SD Works

Engineered Concrete Products, LLC

A motion was made by Matt Judson and seconded by David Emery to approve a SD Works loan request from Engineered Concrete Products, LLC in the amount of \$1,012,500. Secured by a second lien position on finance assets, personal guarantees from principals with 10% or more ownership and corporate guarantees.

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.

REDI

TTL Holdings, LLC

A motion was made by Mike Luken and seconded by Kevin Tetzlaff to approve a waiver for a loan over \$1,000,000 and a REDI loan request from TTL Holdings, LLC in the amount of \$1,192,500. Secured by a pro-rate shared first lien position on financed assets, personal guarantees from principals with 10% or more ownership and corporate guarantees.

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.

Bills

A motion was made by Sharon Casey and seconded by Joy Nelson to approve the bill payable to Moody's Analytics in the amount of \$14,045 for 2021 and \$14,888 for 2022.

Motion passed by a voice vote.

Adjourn

A motion was made by Kevin Tetzlaff and seconded by Mike Luken to adjourn the meeting at 10:29 a.m.

Motion passed by a voice vote.

Matt Judson, Treasurer

GRANT COMMITTEE
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
TUESDAY, MAY 30, 2023, 11:00 A.M. CT

Members Present

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

Staff Present

Interim Commissioner Travis Dovre, Deputy Commissioner Chris Schilken, Ashley Moore, Nadine Agneau, Stephanie Deyo and Joe Fiala

Call to Order

Chairman Kettering called the meeting to order at 11:05 a.m.

Agenda

A motion was made by Sharon Casey 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 11:06 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 Grant Committee out of executive session at 11:20 a.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 Sharon Casey and seconded by Mike Luken 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 (Blooming Valley Dairy, LLC, Dakota Range III, LLC, Red's All Natural, LLC, Royal Canin, US, SFP, LLC, Sweetland Wind Farm, LLC, Valley Queen Cheese Factory and Wild Springs Solar, LLC

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

A motion was made by Mike Luken and seconded by Sharon Casey.

Motion passed by a voice vote.

Adjourn

A motion was made by Sharon Casey and seconded by Mike Luken to adjourn the meeting at 11:22 a.m.

Motion passed by a voice vote.

Matt Judson, Treasurer

CREDIT COMMITTEE
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
TUESDAY, JUNE 6, 2023, 10:30 A.M. CT

Members Present

Vice-Chairman Don Kettering, Reed Kessler and Matt Judson

Staff Present

Commissioner Chris Schilken, Ashley Moore, Travis Dovre, Jack Valentine, Nadine Agneau, Nick Rabern and Joe Fiala

Others Present

Mike Bietz – BankWest, Inc.

Call to Order

Vice-Chairman Kettering called the meeting to order at 10:34 a.m.

Agenda

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

Motion passed by a voice vote.

Conflicts Disclosure – Vice-Chairman Erickson opened the floor for committee members to identify potential conflicts under SDCL Chapter 3-23. Matt Judson declared a potential conflict with Custom Skirting, LLC due to banking relations. The Vice-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 Reed Kessler and seconded by Matt Judson to enter into Executive Session at 10:37 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 Vice-Chairman declared the Credit Committee out of Executive Session at 11:46 a.m. The Vice-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 Matt Judson and seconded by Reed Kessler to approve the Vice-Chairman's report from executive session.

Motion passed by a voice vote.

Loan Review

SSM, LLC

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

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

Motion passed by a roll call vote.

Old Business

North Sioux City Economic Development Corporation

Credit Committee recommends to the board accepting the conditions and proposal as presented by staff and approving the amended commitment letter.

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

Motion passed by a voice vote.

New Business

Blankenship Painting, 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.

M.A. Murphy, LLC

Credit Committee recommends to the board approving the REDI application as presented.

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

Motion passed by a voice vote.

Custom Skirting, LLC

Credit Committee recommends to the board approving the SD Works applications as presented.

A motion was made by Reed Kessler. The Vice-Chairman asked if there were any objections to proceeding to vote without a second; there were no objections.

Motion passed by a voice vote with Matt Judson abstaining.

North Prairie Butchery, LLC

To table both REDI and SD Works loan applications until the next meeting of the Credit Committee and direct staff to gather additional information as discussed.

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

Motion passed by a voice vote.

Adjourn

A motion was made by Matt Judson and seconded by Reed Kessler to adjourn the meeting at 11:51 a.m.

Motion passed by a voice vote.

Matt Judson, Treasurer

C

May 16, 2023

To Management
State of South Dakota -
Governor's Office of Economic Development
South Dakota Board of Economic Development Revolving Economic Development Initiative
711 East Wells Avenue
Pierre, South Dakota 57501

You have requested that we prepare the monthly financial statements of the Governor's Office of Economic Development - Board of Economic Development Revolving Economic Development Initiative (Governor's Office of Economic Development - REDI) during the year ended June 30, 2024, which comprise the statements of net position and the related statements of revenues, expenses, and changes in net position and cash flows. As you have requested, the monthly financial statements will not include the related notes to the financial statements as required by accounting principles generally accepted in the United States of America.

You have requested that we prepare the annual financial statements of the Governor's Office of Economic Development - REDI which comprise the statement of net position as of June 30, 2023, and the related statements of revenues, expenses, and changes in net position, and cash flows and the related notes to the financial statements for the year then ended as required by accounting principles generally accepted in the United States of America.

We are pleased to confirm our acceptance and our understanding of this engagement by means of this letter.

Our Responsibilities

The objective of our engagement is to prepare financial statements in accordance with accounting principles generally accepted in the United States of America based on information provided by you. We will conduct our engagement in accordance with Statements on Standards for Accounting and Review Services (SSARs) promulgated by the Accounting and Review Services Committee of the AICPA and comply with the AICPA's *Code of Professional Conduct*, including the ethical principles of integrity, objectivity, professional competence, and due care.

We are not required to, and will not, verify the accuracy or completeness of the information you will provide to us for the engagement or otherwise gather evidence for the purpose of expressing an opinion or a conclusion. Accordingly, we will not express an opinion or a conclusion nor provide any assurance on the financial statements.

Our engagement cannot be relied upon to identify or disclose any financial statement misstatements, including those caused by fraud or error, or to identify or disclose any wrongdoing within the entity or noncompliance with laws and regulations.

Management Responsibilities

The engagement to be performed is conducted on the basis that management acknowledges and understands that our role is to prepare financial statements in accordance with accounting principles generally accepted in the United States of America. Management has the following overall responsibilities that are fundamental to our undertaking the engagement to prepare your financial statements in accordance with SSARs:

- a) The selection of accounting principles generally accepted in the United States of America as the financial reporting framework to be applied in the preparation of the financial statements.
- b) The design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- c) The prevention and detection of fraud.
- d) To ensure that the entity complies with the laws and regulations applicable to its activities.
- e) The accuracy and completeness of the records, documents, explanations, and other information, including significant judgments, you provide to us for the engagement to prepare financial statements.
- f) To provide us with:
 - i. Access to all information of which you are aware that is relevant to the preparation and presentation of the financial statements, such as records, documentation, and other matters;
 - ii. Additional information that may be requested for the purpose of the preparation of the financial statements; and
 - iii. Unrestricted access to persons within the Governor's Office of Economic Development - REDI with whom we determine necessary to communicate.

The financial statements will not be accompanied by a report. However, you agree that the financial statements will clearly indicate that no assurance is provided on them.

Other Relevant Information

As part of our engagement, we will also:

- Propose adjusting or correcting journal entries to be reviewed and approved by Governor's Office of Economic Development - REDI's management
- Consult management on the implementation of new accounting standards

With respect to any nonattest services we perform:

- We will not assume management responsibilities on behalf of Governor's Office of Economic Development - REDI. However, we will provide advice and recommendations to assist management in performing its responsibilities.
- Governor's Office of Economic Development - REDI's management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.

- Our responsibilities and limitations of the engagement are as follows:
 - We will perform the services in accordance with applicable professional standards.
 - This engagement is limited to the services previously outlined. Our firm, in its sole professional judgment, reserves the right to refuse to do any procedure or take any action that could be construed as making management decisions or assuming management responsibilities.

With regard to the electronic dissemination of financial statements, including financial statements published electronically on your Internet website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

We want you to be aware of our record retention policy with respect to your files and related documentation. Based on our present policies, we will maintain this information in electronic format for seven years after which it will be destroyed. We may modify our record retention policies from time to time in accordance with our professional obligations. It is, therefore, important for you to keep copies of your reports and related supporting data in your files.

Deidre Budahl, CPA is the engagement partner for the services specified in this letter. Her responsibilities include supervising Casey Peterson, LTD's services performed as part of this engagement.

Our fee for these services will be based on the number of hours required by the staff assigned to complete the engagement. In accordance with our recent discussion, we believe that the engagement fee will not exceed \$47,000 for the year ended June 30, 2024. Our invoices for these services will be rendered as work progresses and are payable upon presentation. The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you before we may from time to time and depending on the circumstances and nature of the services we are

We will be pleased to discuss this letter with you at any time. If you request us to perform additional services not contemplated or described in this engagement letter, we will provide you with a separate agreement describing those additional services and fees.

Please sign and return this letter to indicate your acknowledgement of, and agreement with, the arrangements for our engagement to prepare the financial statements described herein, and our respective responsibilities.

Respectfully,

Casey Peterson, LTD

Casey Peterson, LTD

Rapid City, South Dakota

Governor's Office of Economic Development - REDI

May 16, 2023

Page 4 of 4

RESPONSE:

This letter correctly sets forth our understanding.

Governor's Office of Economic Development - REDI

Acknowledged and agreed on behalf of Governor's Office of Economic Development - REDI by:

Signature _____

Title _____

Date _____

STATE OF SOUTH DAKOTA
CONTRACT FOR SERVICES

Between

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

State of South Dakota
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, 2023 and will end on June 30, 2024, 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 \$47,000.00. 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 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.

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 Contractor 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 Contractor at the time of termination may be adjusted to cover any additional costs to the State because of Contractor'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 Contractor it is determined that Contractor

was not at fault, then Contractor 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:

Contractor 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 subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, Contractor 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.

Contractor further agrees that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Contractor 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:

Contractor 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 subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, Contractor has not discriminated against a firearm-related entity, regardless of whether the subject matter of this Agreement is related to the discriminatory activity of Contractor, as defined by South Dakota Executive Order 2023-04.

Contractor further agrees that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Contractor 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 Travis Dovre, GOED Interim 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 38.

32. CONFIDENTIALITY:

For the purpose of this Agreement, "Confidential Information" shall include all information, regardless of its format, disclosed to Contractor by the State and all information, regardless of its format, obtained by Contractor through the provisions of services as contemplated by this Agreement. Contractor, and any person or entity affiliated with Contractor 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. Contractor, and any person or entity affiliated with Contractor 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. Contractor, and any person or entity affiliated with Contractor 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. Contractor, and any person or entity affiliated with Contractor 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 Contractor or to any person or entity affiliated

with Contractor; (ii) was known to Contractor, or to any person or entity affiliated with Contractor, 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 Contractor, or by any person or entity affiliated with Contractor, without the benefit or influence of the State's information; or (v) becomes known to Contractor, or to any person or entity affiliated with Contractor, 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. Contractor understands that this information may be confidential and protected under state or federal law. Contractor 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, Contractor 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.

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

Contractor 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.

Contractor 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, Contractor agrees to return to the State, at Contractor's cost, any Confidential Information or documentation maintained by Contractor regarding the services provided hereunder in a format readily useable by the State as mutually agreed by Contractor and State.

33. WORK PRODUCTS:

Contractor 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 Contractor 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 Contractor 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.

33. TRANSFER OF INFORMATION:

Upon termination of this Agreement (whether initiated by the State or Contractor) and following a written request by the State, Contractor agrees to provide to the State, at Contractor'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 Contractor and State.

34. 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.

35. DILIGENCE AND SKILL:

In the performance of these services and providing the deliverables under the Agreement, Contractor, 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. Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and deliverables furnished by Contractor and any subcontractors, if applicable, under this Agreement. It shall be the duty of Contractor to assure that its services and deliverables are technically sound and in conformance with all pertinent technical codes and standards. Contractor 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.

Contractor 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. Contractor 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 Contractor'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 Contractor shall not in any way relieve Contractor 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 Contractor'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 Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor'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 Contractor. The State may, in its sole discretion, require Contractor to cure such breaches. If it is necessary for Contractor to send at least one qualified and knowledgeable representative to the State's site where the system is located, this will be done at Contractor'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.

36. INTELLECTUAL PROPERTY:

In connection with the performance of this Agreement and the provision of services and deliverables under this Agreement, Contractor will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. Contractor 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. Contractor 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 Contractor 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.

37. THIRD PARTY RIGHTS:

Contractor 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 Contractor's knowledge, threatened suit by any such third party based on an alleged violation of such rights by Contractor.

38. PUBLICITY:

The award of this Agreement to Contractor is not in any way an endorsement of Contractor or Contractor's services by the State and may not be so represented by Contractor in any advertising or publicity materials. Contractor 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. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity without the prior written consent of the State. Contractor 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.

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)

Chris Schilken

(Printed name)

Deidre Budhal

(Printed name)

GOED Commissioner

(Printed title)

Partner

(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: Travis Dovre (605)773-4633.