



# REQUEST FOR PROPOSAL Evaluation Services Electric Energy Efficiency Potential Study

May 16, 2022

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## 1. INTRODUCTION

### 1.1 PURPOSE

Montana-Dakota Utilities Co., a Subsidiary of MDU Resources Group, Inc. (Montana-Dakota) is seeking assistance to identify the remaining, achievable, cost-effective electric energy efficiency potential in Montana-Dakota's retail electric service territory (in the states of Montana, North Dakota, South Dakota, and Wyoming). Montana-Dakota also seeks to quantify the amount of electric energy usage savings achievable through identified energy efficiency programs. The evaluation will compare the costs and savings of energy-efficiency measures relative to standard equipment and practices to determine the amount electric energy efficiency is technically feasible, economically feasible, and achievable in each state jurisdiction in Montana-Dakota's electric service territory for a range of avoided costs.

Considerations in the evaluation shall include but not be limited to utility costs, impacts to consumers, and opportunities for reduction in energy consumption and demand. The analysis should account for unique characteristics of Montana-Dakota's service territory, including regulatory structure, demographics, growth and development, climate, end uses, and overall electric consumption levels.

The selected contractor should be available to start immediately upon execution of a contract. **Proposals are due by 5:00 P.M. CDT on July 1, 2022.**

### 1.2 BACKGROUND

Montana-Dakota is an investor-owned utility serving electric and natural gas customers in the states of Montana, North Dakota, South Dakota, and Wyoming. The scope of this Request for Proposal relates Montana-Dakota's entire electric service territory. Montana-Dakota's electric system consists of an integrated supply system serving Eastern Montana (31 communities), North Dakota (119 communities) and South Dakota (30 communities) and a separate electric supply system in Wyoming (6 communities). A listing of the communities served is included in Exhibit A.

The integrated system summer peak demand in 2021 was 603.7 MW (147.4 MW in Montana, 424.6 MW in North Dakota and 31.7 MW in South Dakota) and the winter peak demand in 2020-21 was 572.7 MW (133.6 MW in Montana, 408.9 MW in North Dakota and 30.2 MW in South Dakota). The Wyoming summer

peak demand in 2021 was 69.4 MW and the winter peak demand in 2020-21 was 59.0 MW.

Montana-Dakota currently provides electric energy supply, transmission, and distribution services to the following mix of customers:

<b>Customer Type</b>	<b>Montana</b>	<b>North Dakota</b>	<b>South Dakota</b>	<b>Wyoming</b>
Residential	19,773	78,893	6,436	13,791
Small C&I	5,306	11,976	1,879	2,412
Large C&I	258	1,202	107	140

A map of the Montana-Dakota electric service territory is included as Exhibit B. Montana-Dakota is currently conducting a small portfolio of energy efficiency programs, in the state of Montana, to help customers save energy and improve efficiency. Additional information about Montana-Dakota and its energy efficiency programs is available on the Montana-Dakota website, [www.montana-dakota.com](http://www.montana-dakota.com).

## **2. DESCRIPTION OF WORK TO BE PERFORMED**

### **2.1 DETERMINE BASELINE ENERGY USE AND END USE SATURATION**

This step includes establishing a baseline with which the performance of energy efficiency measures is compared. This requires establishing usage characteristics, baseline energy usage, and appliance saturations for Montana-Dakota's customer base in each state. Part of the baseline process will include developing baseline data for various customer segments or rate classes. Each customer class shall have their usage and peak daily demand characteristics estimated. This baseline should then be modified to known characteristics of Montana-Dakota's system delivery patterns.

### **2.2 IDENTIFY ENERGY-EFFICIENCY MEASURES AND OTHER PROGRAM OPPORTUNITIES**

The successful respondent will develop a list of potential energy efficiency opportunities. Developing a list of these opportunities will include a review of energy efficiency measures in place at other electric utilities, technology databases, and recent literature regarding energy efficiency. A Montana-Dakota

specific database of measures will then be developed and will become property of Montana-Dakota upon completion. The list of potential measures must account for climate, regional availability, company preference and other factors.

### **2.3 TECHNICAL, ECONOMIC, AND ACHIEVABLE POTENTIAL ESTIMATES**

The successful respondent will use cost-benefit software to analyze the economics of the potential energy efficiency measures. Montana-Dakota expects that software used to analyze the measures will utilize a model acceptable to the respective Public Service/Utility Commissions in its service territory. Four cost-benefit tests will be used: Total Resource Cost, as well as Participant, Ratepayer, and Utility Cost tests. This stage of the study will identify the market potentials at three levels: Technical Potential, Economic Potential, and Achievable Potential.

At the end of this stage, there will be a set of defined energy efficiency measures, customer segments for which they apply, their cost-effectiveness, and anticipated program participation levels. Montana-Dakota will have a clear understanding of the energy efficiency market potential within each state's service territory upon completion of this stage.

### **2.4 ENERGY EFFICIENCY MEASURE – PROGRAM DESIGN & DELIVERY**

Montana-Dakota is also interested in respondents providing a plan for program design and delivery. Areas to be addressed are as follows:

- Rebate design levels for the identified programs
- Program parameters (qualifications)
- Program savings by measure and associated algorithms
- Potential program delivery mechanisms

### **2.5 COMPLETE AND PRESENT RESULTS OF THE ENERGY EFFICIENCY POTENTIAL STUDY**

Once the previous steps are finished, a preliminary copy of the study results and scenarios will be presented to employee groups within Montana-Dakota. Additional analysis may be required due to questions and scenarios arising from the presentations to groups within Montana-Dakota.

Final deliverables for the energy efficiency potential study should include:

- Final presentation materials,
- Final report for the study,
- A database of measures with potentials for future use, and
- A clear definition of the methodology used to conduct the study.

### 3. GENERAL PROPOSAL REQUIREMENTS

Respondents are strongly encouraged to follow the contents of this Request for Proposal (RFP) closely when assembling proposals. The proposal shall include a statement affirming the respondent's intention to conduct an independent, objective, and unbiased third-party analysis that can, if needed, be used by Montana-Dakota and supported by the respondent in a proceeding before the company's respective Public Service/Utility Commissions.

Proposals should include the following information:

- State the full name and address of the organization that will perform the work. Include a brief description of the organization history, structure, and size and a description of the company's background and any relationship to the utility industry.
- Describe the project approach and scope of work. Describe in narrative form the plan for accomplishing the tasks outlined in the RFP, including technical approaches and an explanation of why the proposed approach is superior to other approaches. Provide statements and discussion of anticipated major difficulties and problem areas, with potential or recommended approaches for their solution.
- Provide a list of all project deliverables by task.
- Include a breakdown by task of resources required from Montana-Dakota – office space, data sets, etc.
- Provide a breakdown by task of all staffing and resources requirements. Indicate the number of hours allocated to each task for each project and which individual will complete the tasks. Also include an explanation of why the number of hours proposed is both necessary and sufficient to complete the task.
- Identify all staff that will perform work on this project. Include a list of personnel by task with biographical information. Indicate the role of each

team member on this project. If some of the people have not been identified at this time, at a minimum, describe the different job positions, functions, and roles. Each organization submitting a proposal under this RFP shall have a demonstrable knowledge, skill, and experience as it relates to the required work. The proposal must identify all persons that will be employed in the proposed work by skill and qualifications and identify key personnel by name and title and provide a resume for each.

- Include the proposed schedule and/or work-flow chart. Indicate key tasks and timelines for completion. This project must be completed in its entirety and a final report submitted to Montana-Dakota by **April 1, 2023**. Include a scheduling proposal and work plan specifying the date upon which the applicant would be ready to commence work, and any other appropriate scheduling of specific tasks. Also provide an explanation of all known or probable scheduling constraints, or limitations on staff availability, within timeframe of the project. Include a statement that the respondent is willing and able to provide ongoing regulator support following conclusion of the project as necessary, to be billed on the basis of reasonable time, materials, and travel expenses.
- Provide a cost breakdown for each task for these evaluation services. The preferred compensation methods are a fixed fee or a time and materials with a not-to-exceed limit. Provide a projected payment (cash flow) schedule and describe how it is related to the level of effort and deliverable associated with each task. The following cost elements should be included:
  - Personnel (position, rate, hours)
  - Travel (including mileage rate, lodging, etc.)
  - Supplies and materials
  - Other (specify)
  - Total direct costs
  - Indirect costs (may not exceed 24% of direct costs)
  - Budget total

In addition, applicants must submit an hourly billable rate in the event

hourly services are needed for testimony, discovery preparation and response, brief preparation, rulemaking assistance, and/or other services to be provided following the completion of and in addition to the scope of services detailed above.

- Provide proof of qualification/references from successful projects of a similar nature. Proposals should demonstrate significant, in-depth knowledge of and experience in conducting end-use/load profile and DSM potential studies.
- All Respondents will be required to carry at least \$1,000,000 of general and auto liability insurance before Montana-Dakota will enter into any contract with the Respondent. Montana-Dakota understands the Respondents may not currently carry a \$1,000,000 general and auto liability limit. Proof of current insurance and limits should be submitted with all Proposals. Bid pricing should consider this requirement.
- Describe the features and benefits of the proposal that may be unique and more desirable than that of the other respondents.
- Include the names and phone numbers of personnel authorized to negotiate the proposed contract with Montana-Dakota. All proposals must be signed by a duly authorized representative of the party submitting the proposal.
- Include any other information that is believed to be pertinent, but not specifically required elsewhere in this RFP.
- Included as Attachment 1 is a draft template of Montana-Dakota's Consultant Services Agreement, including a Scope of Services and Insurance Requirements. Upon selection, respondent agrees to provide proposed modifications to this agreement and negotiate in good faith.

#### 4. EVALUATION PROCESS

Successful proposals must include all the information requested above. Proposals will be evaluated based on Montana-Dakota's confidence in the respondent's ability to provide quality deliverables in a timely and cost-effective manner.

Montana-Dakota will evaluate all proposals based on cost, completeness, proposal quality, respondent qualifications, and any other criteria it deems relevant. Montana-Dakota reserves the right to accept or reject any or all



proposals at its sole discretion. Montana- Dakota also reserves the right to interview any and all respondents to aid in the selection process.

The following criteria will be used to evaluate the proposals:

- Ability to perform scope of work as stated in this document.
- Understanding of research and analysis, energy efficient technologies, and Montana-Dakota's customers.
- Concise explanation of the strategy behind the proposed approach.
- The quality of the work plan submitted, including financial management and the ability to deliver work in a timely manner.
- Experience of the respondent completing similar projects.
- Cost of the work to be performed.
- Ability to provide clear written reports.
- References.

Once all the proposals are received, Montana-Dakota will develop a short list of respondents. From the short list, additional information may be required such as examples of past reports and energy efficiency potential assessment processes and economic evaluations.

Montana-Dakota reserves the sole discretion to choose whether or not to award this project. Montana-Dakota reserves the right to reject any and all proposals for any reason, to waive minor irregularities in any proposals, and to negotiate with any party in any manner deemed necessary to best serve the interests of Montana-Dakota and its customers.

## 5. ADDITIONAL PROVISIONS

Respondents to this RFP shall declare any potential conflicts of interests within their proposals. Also state the reason(s) why the respondent believes the conflicts of interests would not detrimentally affect the performance of the work requested herein. All respondents shall affirm that they are independent third parties. Respondents must not be currently employed by any person or company that sells, transmits, or generates electricity in Montana, North Dakota, South Dakota and Wyoming.

Montana-Dakota reserves the right to approve or reject personnel in both the proposal process and in the on-going performance of the work.

Respondents must agree to participate in all regulatory proceedings relating to the scope of work for an agreed-to hourly or other acceptable pricing. The pricing is not to be included as part of this proposal. Montana-Dakota will pay, as needed, time plus reasonable travel for members of the evaluation team to perform this participation.

Montana-Dakota is not responsible for costs incurred by Respondents in preparation of this proposal.

News releases pertaining to this RFP, contract award, or the project shall not be made without written approval from Montana-Dakota.

Montana-Dakota will pay for work performed and expenses incurred up to the specified contractor amount. Specific payment provisions will be mutually agreed upon by both parties. All payments will require an itemized billing of work performed in sufficient detail to justify payment.

All deliverables submitted by the selected respondent shall become the property of Montana-Dakota.

Montana-Dakota assumes no liability with respect to this RFP or any matters related thereto. All prospective respondents and their successors, by their participation in the RFP process, shall indemnify, save and hold Montana-Dakota and its employees and agents free and harmless from all lawsuits, causes of action, debts, rights, judgments, claims, demands, damages, losses and expenses arising from or out respondent's response to this RFP and/or any subsequent acts related thereto, included but not limited to the recommendation of the respondent.

Parties agree to sign confidentiality agreements prior to Montana-Dakota providing customer information, if necessary.

Montana-Dakota is a public utility regulated by the Montana Public Service Commission, North Dakota Public Service Commission, South Dakota Public Utilities Commission and Wyoming Public Service Commission. It is likely that Montana-Dakota will need to produce all proposals submitted in response to this RFP, as well as the contract with the successful respondent, to the respective Public Service/Utilities Commissions. Montana-Dakota will not seek to protect the confidentiality of any response, contract, or other material submitted in response

to this RFP by any respondent(s) for any reason. It is the responsibility of the respondent to take whatever action necessary, at its own expense, to protect its interest in maintaining the confidentiality of any proposal, contract, or other material submitted in response to this RFP. By responding to this RFP, respondents are considered to be on notice, aware, and accept their responsibility to preserve their interest in confidential material.

Any material deemed by the respondent to be confidential, trade secret, or proprietary must be clearly marked with particularity. Generic claims of confidentiality, trade secret or propriety information are not acceptable and may be, in Montana-Dakota's sole discretion, cause to reject the bid as non-conforming in whole or in part.

## 6. SCHEDULE AND ADMINISTRATION

The following proposal schedule is an estimate of when major milestones will occur relative to this RFP. Montana-Dakota reserves the right to change all dates at its sole discretion.

RFP distributed to respondents	(May 16, 2022)
Deadline for questions on RFP	(June 10, 2022)
Responses to questions submitted to all respondents	(June 20, 2022)
Deadline for receipt of proposals	(July 1, 2022)
Selection of short list	(August 1, 2022)
Final Selection Complete	(September 1, 2022)

### 6.1 PROPOSAL SUBMISSION

Respondents shall submit two (2) electronic copies of their proposal; one copy showing pricing submitted in both PDF format and unprotected Microsoft Word format. These electronic copies are to be forwarded with any related documents to the address listed below. In addition, respondents shall mail a hard copy of their proposal to the address listed below. Faxed and e-mailed proposals will not be accepted, although e-mail copies of the proposals may be submitted in addition to the official proposal. Montana-Dakota will not be obligated to consider information received outside the time intervals specified in this section. All RFP proposals shall be addressed to the following:

Mr. Larry Oswald  
Montana-Dakota Utilities Co.  
400 North 4<sup>th</sup> Street Bismarck, ND 58501  
701-222-7939  
e-mail: [larry.oswald@mdu.com](mailto:larry.oswald@mdu.com)

Proposals should be clearly marked “Montana-Dakota Request for Proposals – Electric Energy Efficiency Potential Evaluation.”

Proposals as described in this document must be submitted by July 1, 2022. Failure to submit required information within the specified time frame could be considered cause for rejection of this or any subsequent proposals.

## **6.2 INQUIRIES**

Any requests for clarification or additional information regarding this RFP shall be submitted in writing via mail, fax, or e-mail to the following by the deadline specified above to:

Ms. Kathy Baerlocher  
Montana-Dakota Utilities Co.  
400 North 4<sup>th</sup> Street  
Bismarck, ND 58501  
701-222-7982  
e-mail: [kathy.baerlocher@mdu.com](mailto:kathy.baerlocher@mdu.com)

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EXHIBIT A – LIST OF COMMUNITIES SERVED BY MONTANA-DAKOTA UTILITIES CO.

Montana-Dakota provides electric services to the following communities in Montana:

Antelope	Glendive	Redstone
Baker	Homestead	Reserve
Bainville	Ismay	Rosebud
Brockton	Kinsey	Savage
Carlyle	Medicine Lake	Scobey
Culbertson	Miles City	Sidney
Fairview	Outlook	Terry
Fallon	Plentywood	Whitetail
Flaxville	Plevna	Wibaux
Forsyth	Poplar	Wolf Point
Froid		

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EXHIBIT A – LIST OF COMMUNITIES SERVED BY MONTANA-DAKOTA UTILITIES CO.

Montana-Dakota provides electric services to the following communities in North Dakota:

Apple Valley	Mandan	Corinth	New England
Bismarck	Merricourt	Coteau	Noonan
Dawson	Monango	Coulee	Norma
Glen Ullin	Napoleon	Croftby	Northgate
Hebron	New Leipzig	Dickinson	Portal
Almont	New Salem	Dodge	Powers Lake
Ashley	Selfridge	Donnybrook	Rawson
Beulah	Steele	Dunn Center	Ray
Braddock	Sterling	Epping	Reeder
Burnstad	Strsburg	Fairview	Regent
Carson	Tappen	Flaxton	Rhame
Center	Venturia	Gascoyne	Richardton
Driscoll	Wishek	Gladstone	Ross
Elgin	Zap	Grenora	Scranton
Ellendale	Zeeland	Halliday	Sentinel Butte
Forbes	Alamo	Hamlet	Sherwood
Fredonia	Alexander	Hanks	South Heart
Fullerton	Ambrose	Haynes	Springbrook
Golden Valley	Appanm	Hettinger	Stanely
Hague	Arnegard	Kenmare	Taylor
Hazelton	Battleview	Killdeer	Temple
Hazen	Beach	Larson	Tioga
Heil	Belfield	Lemmon	Tolley
Judson	Bentley	Lignite	Watford City
Kintyre	Bowbells	Loraine	Werner
Kulm	Bowman	Marmarth	Wheelock
Lehr	Bucyrus	McGregor	Wildrose
Leith	Burt	Mohall	Williston
Linton	Carpio	Morristown	Zahl
McKenzie	Columbus	Mott	

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EXHIBIT A – LIST OF COMMUNITIES SERVED BY MONTANA-DAKOTA UTILITIES CO.

Montana-Dakota provides electric services to the following communities in South Dakota:

Bowdle	Hoven	Selby
Gettysburg	Ipswich	Seneca
Glenham	Java	Tolstoy
Akaska	Lebanon	Wetonka
Artas	Leola	Camp Crook
Eurka	Mobridge	Lemmon
Frederick	Mound City	McIntosh
Herried	Onaka	Morristown
Hillsview	Pollock	Thunderhawk
Hosmer	Roscoe	Watauga

Montana-Dakota provides electric services to the following communities in Wyoming:

Acme	Story
Big Horn	Dayton
Sheridan	Ranchester





# **ATTACHMENT 1**

## **CONSULTANT SERVICES AGREEMENT TEMPLATE**

## CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date") between [COMPANY] with its principal place of business located at \_\_\_\_\_ ("Company") and \_\_\_\_\_, located at \_\_\_\_\_ ("Consultant").

WITNESSETH:

WHEREAS, Company requests Consultant to perform services for it and may request Consultant to perform other services in the future; and

WHEREAS, the Company and Consultant desire to enter into this Agreement, which will define respective rights and duties as to all services to be performed.

NOW, THEREFORE, in consideration of the above premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

### 1. CONSULTING SERVICES

- 1.1 Effective \_\_\_\_\_, \_\_\_\_\_, Company retains Consultant and Consultant shall provide Company with certain consulting services (hereinafter described as the "Services") described in one or more Scope(s) of Services ("Scope of Services") attached hereto or subsequently issued by Company and agreed to by Consultant. The nature of the Services may be modified by Company in writing at any time, with the written agreement of Consultant as provided in Section 11.

### 2. TERM

- 2.1 This Agreement shall commence on the date and year first above written and shall continue for a period of \_\_\_\_\_ unless earlier terminated in accordance with the provisions of this Section 15 or upon the mutual agreement of the parties.

### 3. CONSULTANT'S RESPONSIBILITIES

- 3.1 Consultant shall perform the services as described in the Scope of Work, attached hereto as Exhibit A, which is by this reference, incorporated herein and made part hereof. Consultant shall be responsible for the quality of the Services and shall perform the Services to conform to generally accepted standards applicable to the types of services and work provided hereunder. Consultant shall also perform the Services in an economically and environmentally responsible manner. Consultant shall be responsible for the standards, performance, and actions of its subcontractors.
- 3.2 Consultant shall furnish all equipment, materials, and services to perform the Services unless otherwise specified herein or in the Scope of Work.
- 3.3 Consultant shall give all notices related to the Services to applicable Governmental Bodies and obtain and pay for all licenses, permits and inspections necessary to perform the Services. The foregoing shall not include general permits obtained by Company related to the project unless otherwise provided in the Scope of Work.
- 3.4 In the event Consultant performs Services on or at a Company site, Consultant and its employees and subcontractors shall comply with all applicable provisions of Company's policies and procedures applicable to the site as determined by Company, including, but not limited to any instructions and procedures pertaining to site security, industrial safety, environmental directives, work authorization, equipment control and hazardous materials.

#### **4. COMPENSATION**

- 4.1 The Consulting Services shall be performed at the rate set forth in the Scope of Work and the cost of the Services shall not exceed the maximum amount, if any, specified in the Scope of Work.
- 4.2 Unless otherwise provided in the Scope of Work, invoices shall be issued to Company by Consultant monthly during performance of the Services, and payment shall be due 30 business days after receipt of invoices. If requested by Company, each invoice or other application for payment must be accompanied by a lien waiver for the Services for which payment is to be made on a form supplied by or acceptable to Company. Payments otherwise due may be withheld if defective Services have not been remedied, Company has not received satisfactory assurance that all claims for labor or materials incurred in connection with the Services have been satisfied, damage by Consultant to Company or others has not been adjusted, or if there has been any other failure to perform in accordance with this Agreement; provided, however, that the amount of payments withheld shall not exceed the reasonably estimated amount of the matter in dispute.

#### **5. EXPENSES**

- 5.1 Company will reimburse Consultant for all pre-approved, reasonable and necessary expenses, including, without limitation, travel, lodging and meal expenses incurred in connection with the Services. Consultant shall promptly provide Company with documentation supporting all such expenses.

#### **6. WORK SCHEDULE**

- 6.1 Consultant agrees that time is a significant factor in Company's decision to engage Consultant to perform the Services. Consultant agrees to adhere to the work schedule, if any, set forth in the Scope of Work. If requested by Company, Consultant shall promptly submit regular progress reports as to the Services.

#### **7. WARRANTY**

- 7.1 Consultant warrants that it will perform the Services in accordance with the standards of care and diligence normally practiced by recognized consulting firms in performing services of a similar nature in existence at the time of performance of the Services.
- 7.2 Provided that Company has notified Consultant of Consultant's failure to meet the warranty in this Section 6 within twelve months of Consultant's completion of the Services under a Scope of Work, Consultant shall, at its expense, promptly correct and modify such defective services.

#### **8. INDEPENDENT CONTRACTOR STATUS**

- 8.1 Consultant is an independent contractor of Company. Nothing contained in this Agreement shall be construed to create the relationship of employer and employee, principal and agent, partnership or joint venture, or any other fiduciary relationship. Consultant shall have no authority to act as agent for, or on behalf of, Company, or to represent Company, or bind Company in any manner. Consultant agrees that it shall be responsible for any and all taxes and other payments due on payments received by it from Company hereunder and Company shall not be responsible for the withholding and/or payment of any federal, state and local income and other payroll taxes, workers' compensation, disability benefits or other legal requirements applicable to Consultant. Consultant, its employees and subcontractors, will not be entitled to worker's compensation, retirement, insurance or other benefits afforded to employees of Company.

#### **9. CONFIDENTIAL INFORMATION**

- 9.1 Consultant and its employees shall not, during the time of performing Services or thereafter, disclose to anyone other than authorized employees of the Company (or persons designated by such duly authorized

employees of the Company) or use for the benefit of Consultant and its employees or for any entity other than the Company, any information of a confidential nature, including but not limited to, information relating to: any intellectual property; any Company projects, programs or customers; the technical, commercial or other affairs of the Company; or, any information identified by Company as confidential.

## 10. INTELLECTUAL PROPERTY

- 10.1 During the course of performing the Services, Consultant's directors, officers, employees, or other representatives may, independently or in conjunction with Company, develop information, produce work product, or achieve other results for Company in connection with the Services. Consultant agrees that such information, work product, and other results, systems and information developed by Consultant and/or Company in connection with such Services (hereinafter referred to collectively as the "Work Product") shall, to the extent permitted by law, be a "work made for hire" within the definition of Section 101 of the Copyright Act (17 U.S.C. §101), and shall remain the sole and exclusive property of Company when Consultant has been compensated for Services rendered. To the extent any Work Product is not deemed to be a work made for hire within the definition of the Copyright Act, Consultant with effect from creation of any and all Work Product, hereby assigns, and agrees to assign, to Company all right, title and interest in and to such Work Product, including but not limited to copyright, all rights subsumed thereunder, and all other intellectual property rights, including all extensions and renewals thereof. Consultant further agrees to provide all assistance reasonably requested by Company, both during and subsequent to the Term of this Agreement, in the establishment, preservation and enforcement of Company's rights in the Work Product. Upon the termination of this Agreement, Consultant agrees to deliver promptly to Company all printed, electronic, audio-visual, and other tangible manifestations of the Work Product, including all originals and copies thereof. Consultant also agrees to waive any and all moral rights relating to the Work Product, including but not limited to, any and all rights of identification of authorship and any and all rights of approval, restriction or limitation on use, and subsequent modifications. Nothing contained in this Section shall be construed as limiting or depriving Consultant of its rights to use its basic knowledge and skills to carry out other projects or work for itself or others, whether or not such other projects or work are similar to the Services to be performed pursuant to this Agreement. Consultant shall have the right to retain and use copies of drawings, documents, and engineering and other data furnished or to be furnished by Consultant and the information contained therein. At all times, each party shall retain all of its rights in its drawing details, designs, specifications, models, databases, computer software, copyrights, trade and service marks, patents, trade secrets, and any other proprietary property.

## 11. CHANGE ORDERS

- 11.1 Company reserves the right to order, in the nature of additions, deletions, or modifications, changes in the Scope of Work, without invalidating this Agreement. However, all such changes shall be authorized by a "Change Order" signed by Company's representative. If Consultant claims that the Change Order causes an increase or decrease in the cost of or the time required for performance of the Services, Consultant shall give Company written notice of such increase or decrease within five (5) business days following the receipt of such a Change Order, but in any event, prior to commencement of any additional or modified Services pursuant to the Change Order, unless allowed a greater number of days by Company. Consultant shall also provide sufficient documentation to Company to justify the increase or decrease in the price of or the time required for performance of the Services. If agreed to in writing by Company, an equitable adjustment may be made in the compensation or work schedule, or both, and the Change Order shall be deemed to modify the Agreement. In the event the Parties do not agree that a Change Order should give rise to a change in work schedule or compensation, the matter will be subject to Section 19.7 of this Agreement; however, Consultant should proceed to perform the Services described in the Change Order if so directed by Company. Consultant's failure to comply with this Section 11 shall constitute Consultant's agreement to perform the Change Order in accordance with the price and schedule specified in the Scope of Work and/or subsequent revisions thereto.

## 12. SUSPENSION

- 12.1 Company may, by written notice to Consultant, suspend at any time the performance of all or any portion of the Services. During the period of suspension, Consultant shall use commercially reasonable efforts to minimize costs associated with suspension. Upon receipt of notice to resume suspended Services, Consultant shall promptly resume performance of the suspended Services to the extent required in the notice. Consultant expressly waives any claim it may have for additional time or extra compensation because of any suspension of the Services unless such claim along with a revised work schedule (with respect to the suspended Services) is presented to Company in writing within ten (10) calendar days after Consultant's receipt of notice to resume the Services. A claim for additional time or extra compensation shall be evidenced by all supporting documentation requested by Company and shall be subject to the audit by the Company.

## 13. INDEMNIFICATION

- 13.1 Consultant agrees to indemnify, defend, and hold harmless Company and its officers, directors, employees and agents, from and against all claims, liabilities, losses, costs, damages, judgments, penalties, fines, attorneys' fees, court costs and other legal expenses, insurance deductibles and all other expenses to the extent caused by: (i) the acts or omissions of Consultant or its directors, officers, employees, agents, and (ii) Consultant's failure to perform any of its obligations under this Agreement. Company will promptly notify Consultant of any claim for indemnification.

## 14. INSURANCE

- 14.1 At all times during the term of this Agreement, Consultant shall comply with and maintain in full force the insurance policies and additional requirements set for on the attached Exhibit B.

## 15. TERMINATION

- 15.1 Should Consultant become insolvent or bankrupt, or commit a substantial breach of this Agreement and thereafter fail to commence to remedy the same within ten days after written notice thereof from Company and thereafter fail to proceed diligently in remedying the same, Company may terminate this Agreement. Upon any such termination, Consultant shall be compensated for all costs incurred and compensation earned for Services then performed in accordance with this Agreement.
- 15.2 Should Company become insolvent or bankrupt, or commit a substantial breach or default of any of the covenants or obligations hereunder and thereafter (a) fail to remedy the same within ten days after written notice thereof from Consultant if the breach constitutes a failure to pay money or (b) fail to commence to remedy the same within ten days after written notice thereof from Consultant and thereafter fail to proceed diligently in remedying the same if the breach is other than to pay money, then Consultant may terminate this Agreement. Should Consultant so terminate this Agreement, Consultant shall be paid for all costs incurred and compensation earned for Services performed to the date of termination and through demobilization, including any cancellation charges by subcontractors or vendors.
- 15.3 Company reserves the right to cancel, for convenience, the Agreement or any Scope of Work upon notice in writing to Consultant. Should the Agreement or Scope of Work be so canceled by Company, Consultant shall be paid for all compensation earned for Services performed to the date of cancellation and through demobilization, including any cancellation charges by vendors and subcontractors.

## 16. CLAIMS AND LIENS

- 16.1 Unless otherwise reserved in writing prior to final payment, all work performed by Consultant shall be turned over to Company free from all laborer's, materialmen's and mechanic's liens upon the results or products of the Services or upon the real property upon which any of the work is located arising out of the Services, labor and materials furnished by Consultant or any of its subcontractors under this Agreement.

Consultant agrees that upon completion of the Services, it will, upon request of the Company, furnish Company with proof satisfactory to Company that there are no unsatisfied claims for labor, material or injuries to persons or damages to property. In the event Company is notified in writing of a third-party claim(s) arising from the Services, Company shall notify Consultant of such claim and Consultant shall appoint a representative who will have the authority to settle any claims, subject to the prior approval of any settlement terms by Company. If Consultant fails to appoint a representative to settle such claims, Company shall have the right to make settlement thereof and charge the same to Consultant.

## 17. LIMITATION OF LIABILITY

- 17.1 In no event shall Company be liable to Consultant for any special, incidental, indirect, punitive or consequential loss or damage whether or not such loss or damage is caused by the fault or negligence of Company. Company's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from performance or breach hereof shall in no case exceed the contract amount of the Consulting Services, plus any applicable Change Orders.
- 17.2 In no event shall Consultant be liable to Company for any special, incidental, indirect, punitive or consequential loss or damage whether or not such loss or damage is caused by the fault or negligence of Consultant. This exclusion does not apply to third party claims requiring indemnification under this Agreement or to claims covered by a policy of insurance required by this Agreement.

## 18. EQUAL OPPORTUNITY EMPLOYMENT

- 18.1 Company is an equal opportunity employer and a federal contractor. Consequently, Consultant agrees that, to the extent applicable, it will comply with Executive Order 11246, the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Section 503 of the Vocational Rehabilitation Act of 1973 and also agree that these laws are incorporated herein by this reference. The Consultant agrees to comply with the provisions of Executive Order 13496 (29 CFR Part 471), relating to the notice of employee rights under federal labor laws.
- 18.2 Consultant shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Consultant shall comply with the nondiscrimination mandates of all Federal, State, and local statutes, regulations and ordinances.

## 19. MISCELLANEOUS

**19.1. Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties hereto, and supersedes all prior or contemporaneous written or oral communications or agreements between Company and Consultant, regarding the subject matter hereof. This Agreement may only be amended by written agreement between Company and Consultant.

**19.2. Counterparts.** This Agreement may be executed in one or more counterparts each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

**19.3. Further Assurances.** Each of the parties shall execute any other documents and take any other actions as may be reasonably necessary to carry out the intent and purpose of this Agreement.

**19.4. Assignment.** This Agreement may not be assigned by Consultant or the rights granted to or obligations imposed upon Consultant transferred or sublicensed by Consultant, without the express prior written consent of Company.

**19.5. Amendments.** This Agreement may only be modified in writing, signed by the parties in interest at the time of such modification.

**19.6. Governing Law.** Each of the provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of \_\_\_\_\_.

**19.7. Disputes.** In the event of a dispute, arising from this Agreement, authorized representatives from each Party familiar with the Services will meet to resolve the dispute. If these representatives fail to resolve the dispute within seven (7) days, senior representatives from each Party will meet to resolve the dispute. If the senior representatives are unable to resolve the dispute in seven (7) days, either party may initiate litigation within the state or federal courts located in the State of \_\_\_\_\_ to resolve the dispute unless the Parties agree to mediate or arbitrate the dispute prior to or in lieu of litigation.

**19.8. Waiver of Jury Trial.** EACH PARTY TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

**19.9. Waivers.** No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**19.10. Severability.** In the event that any part of this Agreement shall be declared unenforceable or invalid, the remaining parts shall continue to be valid and enforceable.

**19.11. Notices.** All notices and demands of any kind or nature which either party may be required or desire to serve upon the other in connection with this Agreement shall be in writing and may be served personally, by fax, by certified mail, or by commercial overnight delivery (e.g., Federal Express), with constructive receipt deemed to have occurred one (1) calendar day after the mailing, sending or transmitting of such notice, to the following addresses or fax numbers:

If to Company:

\_\_\_\_\_ Attn.: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

If to Consultant:

\_\_\_\_\_ Attn: \_\_\_\_\_ Fax: (\_\_\_\_) \_\_\_\_\_

**19.12. Headings.** The headings of the several Sections are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

**19.13. Survival.** The Confidentiality, Warranty, Intellectual Property, Indemnification, Limitations of Liability, Disputes, Governing Law, Waiver of Jury Trial, Waivers, and Severability terms shall survive the expiration or earlier termination of this Agreement.

## 20. ELECTRONIC SIGNATURES

- 20.1 The Parties acknowledge and agree that this Agreement may be executed by electronic signature (including any electronic symbol or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate, or accept such contract or record), which shall be considered as an original signature for all purposes and shall have the same legal validity and enforceability as a manual executed signature for the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act. Without limitation, electronic signature shall include faxed versions of an original signature or electronically scanned and transmitted version of an original signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the Effective Date set out above.

**CONSULTANT**

By: \_\_\_\_\_  
Name:  
Date

**COMPANY**

By: \_\_\_\_\_  
Name:  
Title:  
Date



**EXHIBIT A**  
**SCOPE OF SERVICES**  
 To The  
**CONSULTING SERVICES AGREEMENT**

Between

\_\_\_\_\_  
 (Company)

and

\_\_\_\_\_  
 ("Consultant")

Pursuant to the terms and conditions of the Consulting Services Agreement ("Agreement") executed and made effective as of the \_\_\_ day of \_\_\_\_\_, 201\_, between \_\_\_\_\_ ("Company") and \_\_\_\_\_ ("Consultant"), Company hereby requests that Consultant perform and Consultant agrees to perform the following Services as summarized below and outlined in greater detail in the Consultant's \_\_\_\_\_:

**Effective Date:** This Scope of Services will be effective on \_\_\_\_\_, 20\_\_.

- A. Scope of Services: Consultant will be responsible for completing the following services:
  
- B. Compensation: Company will pay, and Consultant will accept compensation for services provided based on the following basis:
  
- C. Invoicing: Consultant shall furnish Company with an invoice covering the Compensation earned and expenses incurred on the following basis:
  
- D. Schedule: The Consultant's schedule for completion of the services set forth in this Scope of Services is as follows:

IN WITNESS WHEREOF, the parties have executed this Scope of Services.

**Company**

**Consultant**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT B****INSURANCE****INSURANCE REQUIREMENTS**

**Insurance.** Consultant shall obtain, at its own expense, from reliable insurance carriers satisfactory to the Company and authorized to do business in the state where the Work is to be performed, the following applicable insurance policies indicated below, with limits not less than those specified:

1. Worker's Compensation insurance complying with the law of the state(s) in which any Work under this Contract is to be performed, whether or not Consultant is required by such laws to maintain such insurance, including the Alternate Employer Endorsement, and Employer's Liability Insurance with limits of \$1,000,000. Coverage must include, *if applicable*, U.S. Harbor Worker's and Longshoremen's, Outer Continental Shelf, and Jones Act coverage.
2. Commercial General Liability insurance with a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence and general products liability aggregate of \$2,000,000 each, covering all obligations or operations to be performed under this Contract. Policy shall include contractual liability, no modifications that reduce the standard coverage provided under a commercial liability form, include completed operations coverage for minimum of two years, and delete railroad exclusions from contractual section or definition section of insured Contract.
3. Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1,000,000 each occurrence to include coverage for all owned, non-owned, and hired vehicles.
4. Commercial Umbrella Liability/Excess Liability insurance with limits of not less than \$5,000,000 per occurrence.
5. *If applicable*, Consultant's Pollution Liability insurance, \$1,000,000 each occurrence. This policy shall protect against the actual or alleged liability and costs arising from the sudden and accidental release of pollutants or hazardous materials arising from the Consultant's work.
6. *If applicable*, Professional Liability (also known as Errors & Omissions) insurance, with limits not less than \$2,000,000 per claim and in the aggregate. Such policy shall provide coverage for claims arising out of the services provided hereunder by the vendor and/or its subcontractors. Coverage shall be maintained for a period of two years following the termination of this contract, and if coverage is written on a claims-made basis, the retroactive date shall precede the effective date of any professional services being performed. *Required if performing professional services.*
7. *If applicable*, Aviation Liability insurance, \$10,000,000 per occurrence. *Required if using aircraft, including helicopters.*
8. *If applicable*, Marine Liability insurance, \$10,000,000 per occurrence. *Required if using watercraft.*
9. *If Vendor has access to Confidential Information or Personally Identifiable Information*, Vendor shall also carry Privacy and Network Security (also known as Cyber) insurance in the amount of not less than \$2,000,000 for each claim and in the aggregate. Such policy shall include coverage for all costs incurred to respond to the theft, loss, unauthorized disclosure, wrongful collection or access to information, and all damages resulting from such breach, including fines and penalties imposed.
10. Builders Risk/Installation Floater insurance, the Consultant shall purchase, and maintain "all risk" coverage. The insurance shall cover the contract amount, including direct physical loss or damage caused by or resulting from a covered peril to material, supplies, machinery and equipment being installed, constructed or rigged by the Consultant or its Subcontractors and in conjunction with its installation or construction work in the care, custody or control of the Consultant or its subcontractor.

**General Insurance Provisions.**

1. Any and all deductibles/self-insured retentions in the above-described insurance policies shall be assumed by, for the amount of, and at the sole risk of Consultant. Limits may be met in combination of both primary and umbrella/excess policies.
2. Any insurance on a “claims made” basis shall be maintained for at least two years after completion of the services, or Consultant shall provide at least a one-year extended reporting period if coverage is cancelled or non-renewed following completion of the project.
3. The “explosion,” “collapse,” and “underground” (xcu coverage) shall not be excluded from Consultant’s liability insurance policies.
4. Cancellation of policies providing coverage herein, as it affects the interest of Company, shall be effective only after written notice is received by Company thirty (30) days in advance of any such modification or cancellation, except if such cancellation is due to failure to pay premiums in which case 10 days’ prior written notice of cancellation is given to Company.
5. Additional Insured status. Prior to commencing Work under this Contract, Consultant shall deliver to Company certificates of insurance in a form satisfactory to Company evidencing the existence of insurance as provided for above and, except regarding Worker’s Compensation and Professional Liability Insurance, include the Company, its directors, officers, and employees as an additional insured; and shall also provide primary coverage without right of contribution by any insurance carried by the Company. Consultant will provide updated certificates prior to the expiration date of any required insurance.
6. All of the above-described insurance policies, together with all other insurance policies now owned or purchased hereunder, shall contain provisions that the insurance carriers will have no right of recovery or subrogation against Company or any of its subsidiaries or affiliated companies and Consultant does hereby waive its right of recovery against Company where allowed by law.
7. Irrespective of the requirements as to insurance to be carried, the insolvency, bankruptcy or failure of any such insurance carrier providing insurance for Consultant, or failure of any such insurance carrier to pay claims occurring, shall not be held to waive any of the provisions hereof.
8. Further, compliance by the Consultant with the insurance requirements set forth herein shall not relieve the Consultant from liability for amounts in excess of the limits of insurance.
9. Consultant shall require all of its subcontractors to fully comply with these insurance provisions, include the Company as an additional insured, and include a waiver of subrogation in favor of Company. Any deficiencies in the coverages, policy limits, or endorsements of said subcontractor shall be the sole responsibility of the Consultant.
10. Company shall not insure nor be responsible for any loss or damage to equipment or property of any kind owned or leased by the Consultant or its subcontractors, employees, servants, or agents.