

## CONTRACT

<b>Administrator:</b>	Public Service Commission State Capitol - 12th Floor Bismarck, ND 58505-0480 (701) 328-2400	
<b>Date:</b> July 11, 2001		
<hr style="width: 20%; margin: 0 auto;"/> <b>Anthony T. Clark</b> Commissioner	<hr style="width: 20%; margin: 0 auto;"/> <b>Susan E. Wefald</b> President	<hr style="width: 20%; margin: 0 auto;"/> <b>Leo M. Reinbold</b> Commissioner

<b>Contractor</b>		
Snavelly King Majoros O'Connor & Lee, Inc.		
<b>Name</b>		
1220 L St NW Ste 410	Washington D C 20005	202-371-9156
<b>Address</b>	<b>City/State/Zip</b>	<b>Phone</b>
Charles W. King		President
<b>Typed Name</b>		<b>Title</b>
<b>Signature</b>		<b>Date</b>

<b>Agreement Information</b>	
Contract No.:	PU-427-01
Start Date:	7-11-01
End Date:	6-30-03
Program Title:	PU-399-01-186
<b>Type of Contract:</b>	( ) Fixed Price ( X ) Cost Reimb. ( ) Unit Price ( ) Other

<b>Budget Information</b>	
Cost Center:	7100
Services:	\$7,579
Optional on-site review:	0
Expenses:	0
ID	52-0901220
<b>Type of Contractor:</b>	( ) Individual ( X ) Corporation ( ) Partnership ( ) Public Agency ( ) Nonprofit Organization ( ) Other

This contract is entered into between the above two parties. This contract consists of this sheet, general provisions and specific provisions.

## GENERAL PROVISIONS

### CONTRACTUAL FEATURES

#### Legal Authority

The Contractor assures that it possesses legal authority to participate in this contract.

#### Assignment/Subcontracting

The Contractor may not assign this contract or any part thereof, or assign any of the monies to be paid hereunder, nor shall any part of the work done or material furnished under this contract be sublet.

The Contractor may not enter into subcontracts for any of the work contemplated under this contract unless included in the specific provisions of this contract.

#### Termination

The Commission, by ten days written notice listing causes and reasons, may terminate this contract in whole or in part when it is determined that the Contractor has failed to meet the conditions of the contract. The Commission will be liable only for payment provisions of this contract for services satisfactorily rendered prior to the effective date of termination.

Significant deviation from performance standards in this contract may result in reduced or terminated financial participation of the Contractor, subsequent to negotiations with the Commission.

The Contractor or the Commission may terminate this contract in whole or in part upon settlement or when both parties agree that the continuation of the contract would not produce results commensurate with further expenditures of funds. The two parties shall agree upon the termination conditions including effective date and in the case of partial terminations, that portion to be terminated.

In the event state or federal funds are reduced or terminated, the financial participation of the Commission may be reduced or terminated.

#### Disputes

The Contractor agrees to attempt to resolve disputes arising from this contract by administrative process and negotiations in lieu of litigation. Continued performance by the Contractor during disputes is assured.

Any dispute concerning a question of fact arising under this contract which is not settled by the informal means shall be decided by the authorized representative of the Commission who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor.

The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of an appeal. Pending final decision of a dispute, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Commission.

### FISCAL RESPONSIBILITIES

#### Records

The Contractor agrees to maintain program records required by the Commission and to produce program narrative and statistical data at times prescribed by the Commission.

The Contractor agrees to maintain and retain all books, records, and other documents required by the Commission relevant to this agreement for four years after final payment. Records shall be retained beyond four years if audit findings have not been resolved.

#### No Claim for Additional Work

No claim for additional services not specifically herein provided, done, or furnished by the Contractor will be allowed, nor shall the Contractor do any work or furnish any material not covered by the contract, unless such work is ordered in writing by the Commission.

### **Time Keeping Procedures**

The Contractor shall require employees and subcontractors, if applicable, whose positions are funded under this contract or included as match, to maintain adequate documentation for services provided. For positions that are funded from more than one source, an analysis of duties performed by program shall also be prepared.

### **Monitoring, Evaluation and Audit**

The Contractor agrees to cooperate with any monitoring, evaluating and/or audit conducted by the Commission, or their designees who shall have full access to and the right to examine all books, records and other relevant documents.

The Contractor agrees to take immediate corrective action on deficiencies disclosed through program monitoring of costs disallowed in the course of an audit, review, or monitoring.

## **PROGRAM REQUIREMENTS**

### **Equal Opportunity**

No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with this contract because of race, color, disability, or political affiliation or belief.

The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, disability, age, sex, political affiliation or belief or citizenship.

### **Nondiscrimination**

This contract and any subcontract hereunder is subject to the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act, Title VI of the Civil Rights of 1964 and the Americans with Disabilities Act of 1990.

### **Copyrights and Rights in Data**

The contractor agrees that any plans, drawings, designs, specifications, computer programs (which are substantially paid for with federal grant or state funds), technical reports, operation manuals and other work submitted with a proposal or grant application or which are specified to be delivered under this contract or which are developed or produced and paid for under this contract (referred to in this clause as "subject data") are subject to the rights of the Commission to use, duplicate and disclose the subject data in whole or in part, in any manner for any purpose whatsoever, and have others do so. If the material is copyrightable, the contractor may copyright the material, subject to the rights in the government, but the Commission reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish and use the material, in whole or in part, and to authorize others to do so. The contractor shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts expected to produce copyrightable "subject data."

## **SPECIFIC PROVISIONS**

**July 11, 2001**

### **Purpose**

The Commission staff has initiated an investigation into the North Dakota earnings of Montana-Dakota Utilities Co.'s electric operations. To fully pursue and represent its case, staff requires assistance to determine MDU's appropriate cost of capital. The contractor will determine the appropriate cost of capital for MDU in sufficient detail as is necessary to attest to what constitutes a fair and reasonable rate of return.

The contractor's proposal included a bid of \$15,579. Due to budgetary constraints, the commission was unable to enter into an agreement for the entire bid amount initially. Instead, the commission entered into a contract for \$8,000 on May 17, 2001. Using the same bid proposal, it is the commission's intent to enter into a second contract for any additional work necessary, not to exceed \$7,579. All work under this contract must be completed prior to June 30, 2003. All claims for reimbursement under this contract shall be submitted by June 30, 2003.

The specific purpose is to investigate, analyze and provide testimony proposing the proper cost of capital and capital structure necessary to yield the opportunity for MDU to earn a fair and reasonable return on its investment in electric operations in North Dakota including:

1. Professional analysis and review of filing.
2. Prepare and conduct discovery as necessary.
3. Periodic progress reports of discovery, conclusions and recommendations to keep staff and staff legal counsel updated.
4. Prepare written testimony and provide and advanced copy to staff for review prior to submitting as a formal document.
5. Prepare written and oral testimony in rebuttal to pre-filed testimony of other parties in the proceeding.
6. Testify at the hearing.
7. Assist staff legal counsel in preparation of cross-examination of the witnesses of other parties to the proceedings.
8. After the hearing, assist staff legal counsel in preparation of findings of fact for a proposed commission decision.

### **Compensation**

The Contractor will be compensated based on periodic submittal of progress reports. Final payment will be made upon satisfactory completion of the described project work, as determined by the commission.

In the event the case is settled or this agreement is otherwise terminated prior to completion of project work, then compensation will be awarded for work satisfactorily completed.

No part of this contract may be assigned, sublet or subcontracted.