

NORTH DAKOTA PUBLIC SERVICE COMMISSION
 ADMINISTRATION DIVISION
 PERSONAL SERVICE CONTRACT
 SFN 53824 (7/2003)

Administrator:	State of North Dakota Public Service Commission	600 E. Boulevard Avenue Bismarck, ND 58505-0480 Phone: (701) 328-2400
Date: March 31, 2004		
_____	_____	_____
Susan E. Wefald Commissioner	Tony Clark President	Kevin Cramer Commissioner

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

Agreement Information	
PSC Case No.:	PU-04-97
Contract No.:	PU-480-04
Start Date:	Upon Signing
End Date:	6/30/05
Program Title:	MDU Natural Gas Rate Application
Type of Contract:	() Fixed Price (X) Cost Reimb. () Unit Price () Other

Budget Information	
Cost Center:	7700
Services:	\$22,110
Optional on-site review:	0
Expenses:	\$ 1,504
Not to exceed:	\$23,614
Type of Contractor:	() Individual (X) Corporation () Partnership () Public Agency () Nonprofit Organization () Other – Joint Venture

This contract is entered into between the State of North Dakota acting through the Public Service Commission (State) and Snavelly King Majoros O'Connor & Lee, Inc. (Contractor). 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 without the State's express written consent.

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. Any such subcontract must acknowledge the bonding nature of the contract and must incorporate this contract, including any attachments. Contractor is solely responsible for the performance of any subcontractor. Contractor shall not have the authority to contract for or incur obligations on behalf of the State.

TERMINATION

The State, by written notice of default listing causes and reasons, may terminate this contract in whole or in part if (1) the Contractor fails to provide services required by this contract within the time specified or any extension agreed to by the State; or (2) the Contractor fails to perform any of the other conditions or provisions of this contract, or so fails to pursue the work so as to endanger performance of this contract in accordance with its terms. The State 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 State.

This contract may be terminated in whole or in part without cause by mutual consent of the Contractor and the State.

The parties shall agree upon the termination conditions including effective date and in the case of partial terminations, that portion to be terminated.

The State may terminate this contract effective upon delivery of written notice to the Contractor or on any later date stated in the notice in the event (1) funding from federal, state or other sources is not obtained and continued at levels sufficient to allow for purchases of the services or supplies in the indicated quantities or term; (2) federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract; or (3) any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Any contract that extends beyond the current biennium may be terminated by the State if sufficient funds are unavailable, if the law regarding the contract is changed, or without cause at any time.

The rights and remedies of the State provided in the termination provisions related to defaults by the Contractor are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

FORCE MAJEURE

Contractor will not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the Contractor's reasonable control and the Contractor gives notice to the State immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

DISPUTES

The Contractor agrees to attempt to resolve disputes arising from this contract by informal administrative process and negotiations in lieu of litigation. Continued

performance by the Contractor during disputes is assured.

The State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolutions. The parties have the right to enforce their rights and remedies in judicial proceedings. The State does not waive any right to a jury trial.

MERGER AND MODIFICATION

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

SEVERABILITY

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

NOTICE

All notices or other communications required under this contract shall be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

State

Illona A. Jeffcoat-Sacco
Executive Secretary
Public Service Commission
600 E. Boulevard Ave. Dept 408
Bismarck, ND 58505-0480

Contractor

Charles W. King, President
Snively King Majoros O'Connor & Lee, Inc.
1220 L St NW Ste 410
Washington, D.C. 20005

APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

SPOILIATION – NOTICE OF POTENTIAL CLAIMS

Contractor shall promptly notify State of all potential claims that arise or result from this contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the State the opportunity to review and inspect the evidence, including the scene of an accident.

INDEMNITY

Contractor shall defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees, from any and all claims of any nature including all costs, expenses and attorneys' fees, that may in any manner result from or arise out of this agreement, except for claims resulting from or arising out of the State's sole negligence. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

CONFIDENTIALITY

Contractor agrees not to use or disclose any information it receives from the State under this contract that the State has previously identified as confidential or exempt from mandatory public disclosure

except as necessary to carry out the purposes of this contract or as authorized in advance by the State. The State agrees not to disclose any information it receives from Contractor that the Contractor has previously identified as confidential and which the State determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. §44-04-18. The duty of the State and Contractor to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

Contractor understands that, except for disclosures prohibited in N.D.C.C. Chapter 47-25.1, the State must disclose to the public upon request any records it receives from Contractor. Contractor further understands that any records that are obtained or generated by the Contractor under this contract, except for records that are confidential under N.D.C.C. Chapter 47-25.1, may, under certain circumstances, be open to the public upon request under North Dakota open records law. Contractor agrees to contact the State immediately upon receiving a request for information under the open records law and to comply with the State's instructions on how to respond to the request.

INSURANCE

a. Required Coverages.

Contractor shall secure and keep in force during the term of this contract, from an insurance company, government self-insurance pool or government self-retention fund authorized to do business in North Dakota, the following insurance coverages covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this contract:

- (1) Commercial general liability, including products or completed operations coverage (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- (2) Professional errors and omissions, including a three year "tail coverage

endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.

- (3) Automobile liability, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- (4) Workers compensation coverage meeting all North Dakota statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- (5) Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance if Contractor is domiciled outside the State of North Dakota.

b. General Insurance Requirements.

The insurance coverages listed above must meet the following additional requirements:

- (1) Any deductible or self insured retention amount or similar obligation under the policies shall be the sole responsibility of the Contractor. The amount of any deductible or self-retention is subject to approval by the State.
- (2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- (3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement

- shall not be limited by the insurance required in this contract.
- (4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the rights and coverages as Contractor under said policies. The additional Insured endorsement for the commercial general liability policy shall be written on a form equivalent to ISO 1985 CG 20 10-form, or such other form as approved by the State, and shall not limit or delete State's coverage in any way based upon State's acts or omissions.
- (5) The insurance required in this agreement, through a policy or endorsement, shall include:
- a. a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
 - b. a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior notice to the undersigned State representative;
 - c. a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
 - d. a provision that Contractor's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State, and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
 - e. cross liability/severability of interest for all policies and endorsements.
- (6) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
- (7) The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to commencement of this agreement.
- (8) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

ATTORNEY FEES

In the event a lawsuit is instituted by the State to obtain performance due of any kind under this contract, and the State is the prevailing party, Contractor shall, except when prohibited by N.D.C.C. § 28-26-04, pay the State's reasonable attorney fees and costs in connection with the lawsuit.

INDEPENDENT ENTITY

Contractor is an independent entity under this contract and is not a State employee for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. The Contractor retains

sole and absolute discretion in the manner and means of carrying out the Contractor's activities and responsibilities under this contract, except to the extent specified in the contract.

FISCAL RESPONSIBILITIES

RECORDS

All records, regardless of physical form, and the accounting practices and procedures of the Contractor relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. The Contractor shall maintain and retain all books, records, and other documents required by the State and to produce program narrative and statistical data at times prescribed by the State 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 State.

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 State, or its designee 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.

PREPAYMENT

The State will not make any advance payments before performance by the Contractor under this contract.

TAXPAYER ID

Contractor's North Dakota tax ID number is: _____

Contractor's federal employer ID number is: 52-0901220

PROGRAM REQUIREMENTS

COMPLIANCE WITH LAWS

Contractor agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. Contractor shall have and keep current at all times during the term of this contract all licenses and permits required by law.

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, religion, national origin, disability, age, sex, political affiliation or belief or citizenship.

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.

WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to the State at the State's request upon termination of this contract. Contractor agrees that all materials prepared under this contract are "works for hire" within the meaning of copyright laws of the United States and assigns to State all

rights and interests Contractor may have in the materials its prepares under this contract, including any right to derivative use of the material. Contractor shall execute all necessary documents to enable State to protect its rights under this section. Contractor shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts entered into relating to this project.

EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties.

SPECIFIC PROVISIONS

Purpose

Montana-Dakota Utilities Co. has filed an application to increase its North Dakota natural gas utility service rates. To fully pursue and represent its case, staff requires assistance to analyze MDU's filing and to provide written and oral testimony. The work will include sufficient detail as is necessary to successfully testify under cross-examination.

All work under this contract must be completed prior to **the commission's fiscal year ending June 30, 2005**. More importantly, the work needs to be sufficiently complete so that the contractor can provide written testimony by a date to be determined and oral testimony at the technical hearing scheduled to begin August 31, 2004.

The specific purpose is to investigate, analyze and provide testimony on issues identified below and in accordance with the contractor's March 25, 2004 proposal in order to provide MDU an opportunity to earn a fair and reasonable return on its electric utility investment in North Dakota. The issues are:

1. Expenses, excluding compensation.
2. Capital expenditures.
3. The cost of capital, including capital structure, the cost of debt, and the cost of equity.
4. Cost allocation among customer classes.
5. Rate design.

The scope of work includes:

1. Professional analysis and review of filing.
2. Prepare and conduct discovery.
3. Periodic progress reports of discovery, conclusions and recommendations to keep staff updated.
4. Prepare written testimony and provide an advanced copy to staff for review prior to submitting as a formal document.
5. Prepare written and oral testimony in rebuttal to 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.