



U.S. Department  
of Transportation  
Pipeline and Hazardous  
Materials Safety  
Administration

1200 New Jersey Avenue SE  
Washington DC 20590

# PIPELINE SAFETY

## 2010 One Call Application

for

**NORTH DAKOTA PUBLIC SERVICE COMMISSION**

**Please follow the directions listed below:**

1. Review the entire document for completeness.
2. Review and have an authorized signatory sign the main application page, page 2.
3. Attach the printed SF-424 and SF-424A forms from the Grants.gov package.
4. Mail the entire document, including this cover page to the following:

**ATTN: Gwendolyn M. Hill  
U.S. Department of Transportation  
Pipeline & Hazardous Materials Safety Administration  
Pipeline Safety, PHP-50  
1200 New Jersey Avenue, SE Second Floor E22-321  
Washington, D.C. 20590**

### **FedSTAR Information**

Electronic Submission Date: Oct 29 2009 8:47AM

3 GS-09-681 Filed 10/29/2009 Pages: 19  
2010 One Call Application  
Public Service Commission



Pipeline and Hazardous Materials Safety Administration
1200 New Jersey Avenue, SE
Washington DC 20590

DEPARTMENT OF TRANSPORTATION

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

2010 One Call Application

Office: NORTH DAKOTA PUBLIC SERVICE COMMISSION

Contact: Moch, Alan

Table with 3 columns: Priority, Project Title, Request. Row 1: 3, Damage Prevention Awareness - Billboard advertising, \$10,000.00. Sub-row: Development and/or conduct of damage prevention awareness campaigns Advertisements

Project Totals \$10,000.00

Authorized Signature [Handwritten: Alan Moch]

Date [Handwritten: 10-29-09]

Title [Handwritten: Director - Testing & Safety Division]
[Handwritten: ND PSC]

**Priority: 3 Project: Damage Prevention Awareness - Billboard advertising**

**Development and/or conduct of damage prevention awareness campaigns Advertisements**

**Has this activity been performed previously and what were the results?**

yes, all previous grant awards have been for damage prevention awareness including 811 awareness campaigns. The results are very difficult to judge. Chad Olson, representative from One Call stated "It is hard to provide you with any statistics as far as the billboards. I can tell you that I saw several of them around the state and they were very well done. They caught your eye and provided the message we wanted in the time you had to view them. I don't know how long they were at each location, but again they provided the message we wanted to get across."

**What do you plan to do with the 2010 requested funds for this project?**

Grant funds for 2010 will again be used to fund billboard advertising throughout the State of North Dakota.

Grant funds have been previously used to purchase billboard space on approximately 30 billboards across the state. The billboards have been strategically placed to achieve the best motoring homeowner and excavator coverage.

The billboards have been placed in the major markets throughout North Dakota with 2 billboards in each of the following cities:

Bismarck, Dickinson, Williston, Minot, Grand Forks, Fargo and Jamestown and

One billboard in each of the following cities:

Mandan, Beulah, Bowman, Linton, Edgeley, Valley City, Wahpeton, Devils Lake, W Fargo, Grafton, Hillsboro, Carrington or New Rockford, Watford City, Stanley, Towner or Rugby and Crosby.

Billboard advertising in selected locations throughout North Dakota, has targeted the general public as a whole to convey the need to call the North Dakota One-Call 800 number or 811 at least 48 hours before the beginning of any digging.

Billboard advertising is a high-impact way of getting your advertising message across to the residents of North Dakota.

**Please indicate the One Call Enforcement Authority for your State and/or Agency:**

All matters coming before the Commission are governed by North Dakota Century Code Chapters 28-32 and 49-07. Complaints are governed by North Dakota Administrative Code Chapter 69-02-02.

**Estimated Budget for this Project:**

Personnel .....	\$0.00
Fringe Benefits .....	\$0.00
Travel .....	\$0.00
Equipment .....	\$0.00
Supplies .....	\$0.00
Contractual .....	\$10,000.00
Other .....	\$0.00
Indirect .....	\$0.00

**Total Requested Cost for this Activity: \$10,000.00**

Are the One Call Application Funds to be transferred to other than "NORTH DAKOTA PUBLIC SERVICE COMMISSION"?

No

Is there Equipment and/or Items associated with this activity?

Yes

Qty	% use for pipeline damage prevention (min 50%)	Total Cost	Associated with Contract?	Description
30	100	\$10,000.00	<input checked="" type="checkbox"/>	Thirty billboards will be placed across the state of North Dakota for public awareness of the need to call one-call using the 800 # or 811 at least 24 hours before digging. The billboards feature the

<b>Opportunity Title:</b>	PHMSA PHP One Call Grant
<b>Offering Agency:</b>	Pipeline & Hazardous Material Safety Administration
<b>CFDA Number:</b>	20.721
<b>CFDA Description:</b>	Pipeline Safety
<b>Opportunity Number:</b>	DOT-PH-PHP-10-OC
<b>Competition ID:</b>	
<b>Opportunity Open Date:</b>	10/15/2009
<b>Opportunity Close Date:</b>	11/18/2009
<b>Agency Contact:</b>	Carrie Brown PMHSA Grant Team E-Mail: Carrie.Brown@dot.gov Phone: 617-494-3318

This document is a notification of funding to be used to apply for the grants listed below. Applications are available at:

If you are having trouble accessing the form to use the opportunity, you should contact the agency. For more information, click on the "Contact" button at the top of this screen. You will then need to locate the correct Federal funding opportunity, download the application and then apply.

This opportunity is only open to organizations, applicants who are submitting grant applications on behalf of a company, state, local or tribal government, academia, or other type of organization.

\* Application Filing Name: ND One Call Application

#### Mandatory Documents

	Move Form to Complete
	Move Form to Delete

#### Mandatory Documents for Submission

Application for Federal Assistance (SF-424)  
Budget Information for Non-Construction Program

#### Optional Documents

Attachments	Move Form to Submission List
	Move Form to Delete

#### Optional Documents for Submission

	Move Form to Submission List
	Move Form to Delete

### 1 Enter a name for the application in the Application Filing Name field.

- This application can be completed in its entirety offline; however, you will need to login to the Grants.gov website during the submission process.
- You can save your application at any time by clicking the "Save" button at the top of your screen.
- The "Save & Submit" button will not be functional until all required data fields in the application are completed and you clicked on the "Check Package for Errors" button and confirmed all data required data fields are completed.

### 2 Open and complete all of the documents listed in the "Mandatory Documents" box. Complete the SF-424 form first.

- It is recommended that the SF-424 form be the first form completed for the application package. Data entered on the SF-424 will populate data fields in other mandatory and optional forms and the user cannot enter data in these fields.
- The forms listed in the "Mandatory Documents" box and "Optional Documents" may be predefined forms, such as SF-424, forms where a document needs to be attached, such as the Project Narrative or a combination of both. "Mandatory Documents" are required for this application. "Optional Documents" can be used to provide additional support for this application or may be required for specific types of grant activity. Reference the application package instructions for more information regarding "Optional Documents".
- To open and complete a form, simply click on the form's name to select the item and then click on the => button. This will move the document to the appropriate "Documents for Submission" box and the form will be automatically added to your application package. To view the form, scroll down the screen or select the form name and click on the "Open Form" button to begin completing the required data fields. To remove a form/document from the "Documents for Submission" box, click the document name to select it, and then click the <= button. This will return the form/document to the "Mandatory Documents" or "Optional Documents" box.
- All documents listed in the "Mandatory Documents" box must be moved to the "Mandatory Documents for Submission" box. When you open a required form, the fields which must be completed are highlighted in yellow with a red border. Optional fields and completed fields are displayed in white. If you enter invalid or incomplete information in a field, you will receive an error message.

### 3 Click the "Save & Submit" button to submit your application to Grants.gov.

- Once you have properly completed all required documents and attached any required or optional documentation, save the completed application by clicking on the "Save" button.
- Click on the "Check Package for Errors" button to ensure that you have completed all required data fields. Correct any errors or if none are found, save the application package.
- The "Save & Submit" button will become active; click on the "Save & Submit" button to begin the application submission process.
- You will be taken to the applicant login page to enter your Grants.gov username and password. Follow all onscreen instructions for submission.

**Application for Federal Assistance SF-424**

Version 02

<b>* 1. Type of Submission:</b> <input type="checkbox"/> Preapplication <input checked="" type="checkbox"/> Application <input type="checkbox"/> Changed/Corrected Application	<b>* 2. Type of Application:</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision	<b>* If Revision, select appropriate letter(s):</b> _____ <b>* Other (Specify):</b> _____
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<b>* 3. Date Received:</b> Completed by Grants.gov upon submission.	<b>4. Applicant Identifier:</b> _____
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<b>5a. Federal Entity Identifier:</b> _____	<b>* 5b. Federal Award Identifier:</b> _____
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**State Use Only:**

<b>6. Date Received by State:</b> _____	<b>7. State Application Identifier:</b> _____
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**8. APPLICANT INFORMATION:**

<b>* a. Legal Name:</b> NORTH DAKOTA PUBLIC SERVICE COMMISSION		
<b>* b. Employer/Taxpayer Identification Number (EIN/TIN):</b> 45-0309764	<b>* c. Organizational DUNS:</b> 802744946	

**d. Address:**

<b>* Street1:</b>	600 E Boulevard 12th Fl
<b>Street2:</b>	_____
<b>* City:</b>	Bismarck
<b>County:</b>	_____
<b>* State:</b>	ND: North Dakota
<b>Province:</b>	_____
<b>* Country:</b>	USA: UNITED STATES
<b>* Zip / Postal Code:</b>	58505-0480

**e. Organizational Unit:**

<b>Department Name:</b> PUBLIC SERVICE COMMISSION	<b>Division Name:</b> Testing and Safety
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**f. Name and contact information of person to be contacted on matters involving this application:**

<b>Prefix:</b> Mr	<b>* First Name:</b> Alan
<b>Middle Name:</b> _____	
<b>* Last Name:</b> Moch	
<b>Suffix:</b> _____	
<b>Title:</b> Division Director	
<b>Organizational Affiliation:</b> _____	
<b>* Telephone Number:</b> 701-328-2413	<b>Fax Number:</b> 701-328-1506
<b>* Email:</b> amoch@end.gov	

**Application for Federal Assistance SF-424**

Version 02

**9. Type of Applicant 1: Select Applicant Type:**

A: State Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

\* Other (specify):

**\* 10. Name of Federal Agency:**

Pipeline & Hazardous Material Safety Administration

**11. Catalog of Federal Domestic Assistance Number:**

20.721

CFDA Title:

Pipeline Safety

**\* 12. Funding Opportunity Number:**

DOT-PH-PHP-10-OC

\* Title:

PHMSA PHP One Call Grant

**13. Competition Identification Number:**

Title:

**14. Areas Affected by Project (Cities, Counties, States, etc.):**

**\* 15. Descriptive Title of Applicant's Project:**

NORTH DAKOTA PUBLIC SERVICE COMMISSION One Call Application

Attach supporting documents as specified in agency instructions.

[Add Attachments](#) [Delete Attachments](#) [View Attachments](#)

**Application for Federal Assistance SF-424**

Version 02

**16. Congressional Districts Of:**

\* a. Applicant

\* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

**17. Proposed Project:**

\* a. Start Date:

\* b. End Date:

**18. Estimated Funding (\$):**

* a. Federal	<input type="text" value="10,000.00"/>
* b. Applicant	<input type="text" value="0.00"/>
* c. State	<input type="text" value="0.00"/>
* d. Local	<input type="text" value="0.00"/>
* e. Other	<input type="text" value="0.00"/>
* f. Program Income	<input type="text" value="0.00"/>
* g. TOTAL	<input type="text" value="10,000.00"/>

**\* 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

- a. This application was made available to the State under the Executive Order 12372 Process for review on
- b. Program is subject to E.O. 12372 but has not been selected by the State for review.
- c. Program is not covered by E.O. 12372.

**\* 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)**

Yes  No

**21. \*By signing this application, I certify (1) to the statements contained in the list of certifications\*\* and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances\*\* and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

\*\* I AGREE

\*\* The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

**Authorized Representative:**

Prefix:  \* First Name:   
Middle Name:   
\* Last Name:   
Suffix:

\* Title:

\* Telephone Number:  Fax Number:

\* Email:

\* Signature of Authorized Representative:  \* Date Signed:

**Application for Federal Assistance SF-424**

Version 02

**\* Applicant Federal Debt Delinquency Explanation**

The following field should contain an explanation if the Applicant organization is delinquent on any Federal Debt. Maximum number of characters that can be entered is 4,000. Try and avoid extra spaces and carriage returns to maximize the availability of space.

[Empty text input area for Applicant Federal Debt Delinquency Explanation]

**BUDGET INFORMATION - Non-Construction Programs**

**SECTION A - BUDGET SUMMARY**

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Priority 1		\$	\$	\$ 0.00	\$	\$ 0.00
2. Priority 2				0.00		0.00
3. Priority 3				10,000.00		10,000.00
4.						
5. Totals		\$	\$	\$ 10,000.00	\$	\$ 10,000.00

**SECTION B - BUDGET CATEGORIES**

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1) Priority 1	(2) Priority 2	(3) Priority 3	(4)	
a. Personnel	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$
b. Fringe Benefits	0.00	0.00	0.00	0.00	
c. Travel	0.00	0.00	0.00	0.00	
d. Equipment	0.00	0.00	0.00	0.00	
e. Supplies	0.00	0.00	0.00	0.00	
f. Contractual	0.00	0.00	10,000.00	10,000.00	10,000.00
g. Construction	0.00	0.00	0.00	0.00	
h. Other	0.00	0.00	0.00	0.00	
i. Total Direct Charges (sum of 6a-6h)	0.00	0.00	10,000.00	10,000.00	\$ 10,000.00
j. Indirect Charges	0.00	0.00	0.00	0.00	\$
k. TOTALS (sum of 6i and 6j)	\$ 0.00	\$ 0.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00
7. Program Income	\$	\$	\$	\$	\$

Authorized for Local Reproduction

**SECTION C - NON-FEDERAL RESOURCES**

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. Priority 1	\$	\$	\$	\$
9. Priority 2				
10. Priority 3				
11.				
12. TOTAL (sum of lines 8-11)	\$	\$	\$	\$

**SECTION D - FORECASTED CASH NEEDS**

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. Non-Federal	\$				
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$

**SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT**

(a) Grant Program	FUTURE FUNDING PERIODS (YEARS)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16. Priority 1	\$	\$	\$	\$
17. Priority 2				
18. Priority 3				
19.				
20. TOTAL (sum of lines 16 - 19)	\$	\$	\$	\$

**SECTION F - OTHER BUDGET INFORMATION**

21. Direct Charges:		22. Indirect Charges:	
23. Remarks:			

PURCHASE OF SERVICE AGREEMENT

The State of North Dakota, acting through its North Dakota Service Commission, Public Utilities Division (State), has determined the services identified in the Scope of Service paragraph below should be purchased.

{Vendor}{Vendor}, {Address}, {City}, ND {Zip}, proposes to provide those services.

State and Vendor therefore enter into the following:

1. TERM OF THE AGREEMENT

This agreement runs from {Month} {Day}, {Year}, through {Month} {Day}, {Year}. This agreement may be terminated at any time by mutual consent of both parties, or upon 30-days' written notice by either party, with or without cause.

This contract will not automatically renew. State will provide written notice to Vendor of its intent to renew this contract at least 60 days before the scheduled termination date.

2. SCOPE OF SERVICE

Vendor shall provide the services outlined in RFP number PU- and Vendor's response to RFP number PU- .

3. COMPENSATION

State will not make any advance payments before performance by Vendor under this contract. State shall pay Vendor the hourly rates and charges as stated in Vendor's 2008 Fee Schedule included in Vendor's response to RFP number 08-115 for completing the scope of service. State will not make payment until an invoice is received and approved by the project manager. Each invoice must include the hours worked, the hourly rate charged, tasks completed, and total bill amount.

Total payment for services in a specific case will be defined by the contract in the specific case.

4. VENDOR'S UNDERSTANDING OF TERM OF FUNDING

Vendor understands that this agreement is a one-time agreement, and acknowledges that it has received no assurances that State may extend this agreement beyond its expiration date.

5. VENDOR ASSURANCES

This agreement will be construed according to the laws of the State of North Dakota. In connection with furnishing supplies or performing work under this agreement, persons who contract with or receive funds to provide services to State are obligated and agree to comply with all local, state, and federal laws, regulations, and executive orders related to the performance of this agreement including the following: Fair Labor Standards Act,

Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the North Dakota Human Rights Act, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, the Drug Abuse Prevention Treatment and Rehabilitation Act of 1970, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Drug-Free Workplace Act of 1988, the Americans with Disability Act of 1990, Alcohol, Drug Abuse and Mental Health Administration Reorganization Act of 1992 and the Pro-Children Act of 1994.

By signing this agreement, Vendor certifies that neither Vendor, Subcontractor, or their principals, are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions with the State or Federal Government by any Department or Agency of the State or Federal Government.

Vendor must be an approved Vendor with the Office of Management and Budget within the State of North Dakota as required by North Dakota Century Code section 54-44.4-09.

6. AUTHORITY TO CONTRACT

Vendor may not contract for or on behalf of or incur obligations on behalf of State. Vendor may subcontract with qualified vendors of services provided that any subcontract acknowledges the binding nature of this agreement, and incorporates this agreement, together with its attachments as appropriate. Vendor agrees to be solely responsible for the performance of any subcontractor. Vendor may not assign or otherwise transfer or delegate any right or duty without State's express written consent.

7. INDEPENDENT ENTITY

Vendor shall perform as an independent entity under this agreement. Vendor, its employees, agents, or representatives are not employees of State for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the Federal Unemployment Act, the North Dakota Unemployment Compensation Law, and the North Dakota Workers' Compensation Act. No part of this agreement may be construed to represent the creation of an employer/employee relationship between State and Vendor. Vendor will retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's activities and responsibilities under this agreement.

8. NONPERFORMANCE

Failure by Vendor to perform the terms of this agreement constitutes a breach of contract and will result in the immediate termination of the agreement. If there is a termination for breach by Vendor, State may retain, as liquidated damages, any payment to be made under this agreement which remains unpaid at the time of the breach and may also recover from Vendor those amounts already paid for individual items of work which are incomplete at the time of the breach.

If a breach by Vendor renders the agreement impossible of performance by Vendor and is caused by circumstances beyond the control of Vendor, and through no fault of Vendor, the agreement will be terminated. In the event of a breach by Vendor in such circumstances, State may set off, against any liability or obligations owed to Vendor under

this agreement or otherwise, any amounts paid for individual items of work which are incomplete at the time of the breach. State is not entitled to liquidated damages if the agreement is terminated because of a breach by Vendor, which is beyond the control of Vendor.

State shall give written notice of the termination to Vendor specifying the effective date of the termination.

9. TERMINATION FOR LACK OF FUNDING OR AUTHORITY

State may terminate this agreement effective upon delivery of written notice to Vendor or on any later date stated in the notice, if:

- 1) Funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or for the indicated term. The agreement may be modified at mutual consent of the parties in writing to accommodate a reduction in funds.
- 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 agreement or are no longer eligible for the funding proposed for payment authorized by this agreement.
- 3) Any license, permit, or certificate required by law or rule, or by this agreement, is for any reason denied, revoked, suspended, or not renewed.

Any termination of this agreement under this section is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

10. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

Vendor shall promptly notify State of all potential claims that arise or result from this contract. Vendor 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.

11. FORCE MAJEURE

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

12. INDEMNITY

Vendor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by Vendor 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.

Vendor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses, and attorneys' fees incurred if the State prevails in an action against Vendor in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

### 13. INSURANCE

Vendor shall secure and keep in force during the term of this agreement and Vendor shall require all subcontractors, prior to commencement of an agreement between Vendor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-rotation funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) 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.
- 5) 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.

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

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Vendor.
- 2) This insurance may be in one 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 duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 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 benefits, rights, and coverages of an additional insured under these policies.
- 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 days' prior written 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 North Dakota Century Code section 54-12-08;

- d) a provision that Vendor'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 Vendor's insurance and shall not contribute with it;
  - e) cross liability/severability of interest for all policies and endorsements;
  - f) 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;
  - g) the insolvency or bankruptcy of the insured Vendor shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured Vendor from meeting the retention limit under the policy.
- 6) The Vendor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

14. ACCESS TO BOOKS AND RECORDS

Vendor shall provide State, the federal government, and their duly authorized representatives, access to the books, documents, papers, and records of Vendor that are pertinent to the services provided under this agreement for the purpose of making an audit or examination, or for making excerpts and transcripts. This documentation must be available for a period of four years from the date of submission of the final expenditures report. Records shall be retained beyond four years if audit findings have not been resolved.

15. NOTICE

Any notice or other communication required under this agreement must be given by registered or certified mail and is complete on the date mailed when addressed to the parties at the following addresses:

{Vendor}	OR	North Dakota Public Service Commission 600 East Boulevard Ave, Dept. 408 Bismarck, ND 58505-0480
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Notice provided under this provision does not meet the notice requirements in North Dakota Century Code section 32-12.2-04(1).

16. INTEGRATION, MODIFICATION, AND SEVERABILITY

This agreement constitutes the entire agreement between Vendor and State. No alteration, amendment, or modification of this agreement is effective unless it is reduced to writing, signed by the parties, and attached to the agreement. If any term of this agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms will not be affected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the agreement does not contain the illegal or unenforceable term.

17. COLLATERAL CONTRACTS

If any inconsistency exists between this agreement and other provisions of collateral contractual agreements that are made a part of this agreement by reference or otherwise, the provisions of this agreement control.

18. APPLICABLE LAW

This agreement is governed by and construed according to the laws of the State of North Dakota. Any action to enforce this agreement must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota.

19. ASSIGNMENT

Neither party may assign this agreement or the party's rights under this agreement without the written approval of the other party. Approval to assign may not be unreasonably withheld. This agreement is equally binding on the respective parties, and their successors and assigns.

20. CONFIDENTIAL INFORMATION

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

Vendor understands that, except for disclosures prohibited in North Dakota Century Code chapter 47-25.1, the State must disclose to the public upon request any records it receives from Vendor. Vendor further understands that any records that are obtained or generated by the Vendor under this contract, except for records that are confidential under North Dakota Century Code chapter 47-25.1, may, under certain circumstances, be open to the public upon request under North Dakota open records law. Vendor 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.

21. WORK PRODUCT, EQUIPMENT, AND MATERIALS

All work product, equipment, and materials created or purchased under this agreement belong to State and must be delivered to State at State's request upon expiration or termination of this agreement. Vendor agrees that all materials prepared under this agreement are "works for hire" within the meaning of copyright laws of the United States and assigns to State all rights and interests Vendor may have in the materials it prepares under this agreement, including any right to derivative use of the material. Vendor shall execute all necessary documents to enable State to protect its rights under this section. State must provide written approval of Vendor's use of work product or materials for purposes outside the scope of this agreement.

22. ATTORNEY FEES

If a lawsuit is filed by State to obtain performance due under this agreement, and State is the prevailing party, Vendor shall pay State's reasonable attorney fees and costs in connection with the lawsuit except when prohibited by North Dakota Century Code section 28-26-04.

23. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

Vendor agrees to attempt to resolve disputes arising from this contract by informal administrative process and negotiations in lieu of litigation. Continued performance by Vendor during disputes is assured. State does not agree to binding arbitration, mediation, or any other form of mandatory alternative dispute resolution. The parties may enforce their rights and remedies in judicial proceedings. State does not waive any right to a jury trial.

24. EFFECTIVENESS OF CONTRACT

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

{VENDOR}  
By \_\_\_\_\_ DATE

Its \_\_\_\_\_  
{TITLE}

Vendor's Federal Taxpayer Identification Number \_\_\_\_\_

STATE OF NORTH DAKOTA  
NORTH DAKOTA PUBLIC SERVICE COMMISSION

By \_\_\_\_\_ DATE  
SUSAN E. WEFALD  
PRESIDENT

By \_\_\_\_\_ DATE  
KEVIN CRAMER  
COMMISSIONER

By \_\_\_\_\_ DATE  
TONY CLARK  
COMMISSIONER

Sample Contract