

CONTRACT NUMBER PU-928-26

Administrator:	State of North Dakota Public Service Commission State Capitol – 12 th Floor Bismarck, ND 58505 (701) 328-2400	Case Number: <u>PU-26-52</u>
Typed Name & Title: Brian Johnson, Executive Secretary		
Signature: 	Date: <u>9/14/2026</u>	

Contractor Name: FTI Consulting, Inc.		
Address: 555 12 th Street NW, Suite 700		
City: Washington	State: DC	Zip: 20004
Phone: 703-966-1954		
Typed Name: Kenneth H. Ditzel		Title: Sr. Managing Director
Signature: 	Date: <u>9/9/2026</u>	

Agreement Information:	
Case Number: <u>PU-26-52</u>	Contract Number: <u>PU-928-26</u>
Start Date: <u>Upon Execution</u>	End Date: <u>December 31, 2027</u>
Program Title: <u>Public Utilities Division</u>	
Type of Contract: (X) Fixed Price () Cost Reimb. () Unit Price () Other	

Budget Information:	
Department: <u>7300</u>	Services: <u>Consulting Services</u>
Expenses: <u>\$129,370.00</u>	Type of Contractor: (X) Corporation () Individual () Public Agency () Partnership () Nonprofit Org. () Other

This Contract is entered into between the State of North Dakota acting through the Public Service Commission (State) and FTI Consulting, Inc. (Contractor). This Contract consists of this sheet, general provisions and specific provisions.

PURCHASE OF SERVICE CONTRACT

The Parties to this Contract (Contract) are the State of North Dakota, acting through its Public Service Commission (STATE) and FTI Consulting, Inc. having its principal place of business at, 1301 McKinney St, Ste 3500, Houston, TX 77071 (CONTRACTOR).

1. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, agrees to provide the services enumerated below. CONTRACTOR shall be registered with the North Dakota Secretary of State and the North Dakota State Procurement Office prior to Contract execution.

CONTRACTOR agrees to perform services outlined in Section 3 per the schedule outlined in Section 3.3.D of RFP number SRC000173 and CONTRACTOR's May 20, 2026, response to RFP number SRC000713 (the "CONTRACTOR's Proposal"). The written proposal provided by CONTRACTOR is attached to and incorporated into this agreement.

2. COMPENSATION

Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed **One Hundred Twenty-Nine Thousand Three Hundred Seventy dollars and zero cents (\$129,370.00)** (Contractual Amount). For clarity, the services included in the contractual amount are the Functional Approach To Work Tasks described on Pages 6 and 7 in the CONTRACTOR'S Proposal.

The Contractual Amount is firm for the duration of the Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract, unless amended, regardless of this difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

The STATE will make payments based on a monthly payment schedule. Each billing must consist of an invoice listing the contract number, hours worked at the contract rate, the staff person completing the work, and include a progress report. No payment will be made until the Project Manager has reviewed the progress report and approved the invoice.

Chris Hanson – Project Manager
Public Utility Analyst – North Dakota Public Service Commission
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480
chanson@nd.gov
701-328-4646

Payment

- A. Payment made in accordance with this Compensation section constitutes payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR will not receive any additional compensation hereunder.
- B. STATE will make payment under this Contract within forty-five (45) calendar days after receipt of an approved invoice.
- C. Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation to this contract. CONTRACTOR's invoice will be subject to reduction for amounts included in any

invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

- D. For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from the payments that are or will become due and payable to CONTRACTOR under this Contract.
- E. CONTRACTOR reserves the right to halt further services until payment is received on past-due invoices. If CONTRACTOR and/or any of its employees are required to testify or provide evidence at or in connection with any judicial or administrative proceedings relating to this Contract to which CONTRACTOR is not a party, STATE will compensate CONTRACTOR at its standard hourly rates and reimburse CONTRACTOR for reasonable expenses (including counsel fees) with respect thereto.

Travel

CONTRACTOR acknowledges travel costs are included in the Contractual Amount and may include travel costs in the monthly invoices submitted to STATE.

Prepayment

STATE will not make any advance payments before performance by CONTRACTOR under this Contract.

Payment of Taxes by STATE

STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001. STATE will furnish certificate of exemption upon request by the CONTRACTOR.

Taxpayer ID

CONTRACTOR shall provide STATE with its federal employer ID number and North Dakota tax ID number upon executing this Contract.

3. TERM OF CONTRACT

This Contract **begins upon complete execution of the contract by all Parties and ends on December 31, 2027.**

No Automatic Renewal

This Contract will not automatically renew.

Extension Option

STATE reserves the right to extend this Contract for an additional period of time, not to exceed twelve (12) months, beyond the current termination date of this Contract.

Renewal Option

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to one (1) option to renew this Contract under the same terms and conditions for a period of twelve (12) months.

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to three options to renew this Contract under the same terms and conditions for a period of twelve months each.

4. TERMINATION OF CONTRACT

Termination for Convenience or by Mutual Agreement

This Contract may be terminated by STATE upon thirty (30) days' written notice to CONTRACTOR. This Contract may be terminated by mutual consent of both Parties executed in writing.

Termination without Cause.

STATE may terminate this Contract in whole or in part when it has determined that continuing the Contract is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.

Early Termination in the Public Interest

STATE is entering into this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

Termination for Lack of Funding or Authority

STATE, by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- A. If 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 term.
- B. If 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.
- C. If 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.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

Termination for Cause

Either party may terminate this Contract effective upon delivery of written notice to the other party, or any later date stated in the notice:

- A. If the other party fails to perform its obligations as required by this Contract within the time specified or any extension agreed to in writing by the non-defaulting party; or
- B. If the other party fails to perform any of the other provisions of this Contract or so fails to pursue its obligations as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of the parties provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

5. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If CONTRACTOR is the affected Party and does not resume performance

within fifteen (15) days or another period agreed between the Parties, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

6. INDEMNIFICATION

The State and Contractor each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

7. INSURANCE

Required Coverages. CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require from all subcontractors, prior to commencement of an agreement between Contractor 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-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- B. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$1,000,000 per occurrence.
- C. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract.
- D. Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- E. Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Contractor shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change of cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.

General Insurance Requirements. The insurance coverages listed above must meet the following additional requirements:

- A. Any deductible or self-insured retention amount or other similar obligation under the policies is the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by the STATE. The STATE acknowledges and accepts that CONTRACTOR's deductible on its professional errors and omissions policy is \$1,000,000.
- B. 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.
- C. The duty to defend, indemnify, and hold harmless the STATE under this agreement is not limited by the insurance required in this agreement.

- D. 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 the commercial general liability policy, including any excess policies (to the extent applicable), that may not be limited to the minimum limits of insurance required by this agreement or by the Contractual indemnity obligations of CONTRACTOR.
- E. The insurance required in this agreement, through a policy or endorsement, must include:
- i. "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the STATE; provided that the foregoing shall not apply to CONTRACTOR's professional errors and omissions policy;
 - ii. a provision that CONTRACTOR'S insurance coverage is 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 is in excess of the CONTRACTOR'S insurance and does not contribute with it; provided that the foregoing shall not apply to CONTRACTOR's professional errors and omissions policy;
 - iii. cross liability/severability of interest for all policies and endorsements;
 - iv. 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;
 - v. The insolvency or bankruptcy of the insured CONTRACTOR does not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.
- F. CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this agreement. All endorsements must be provided as soon as practicable.
- G. Failure to provide insurance as required in this agreement is a material breach of Contract entitling the STATE to terminate this agreement immediately.
- H. CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to these policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

8. WORK PRODUCT

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE's request upon termination of this Contract.

9. NOTICE

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the Parties at the following addresses:

STATE: Brian Johnson, Executive Secretary
Public Service Commission
600 E Blvd Ave, Dept 408
Bismarck, ND 58505-0480

Contractor: Kenneth H. Ditzel, Senior Managing Director
FTI Consulting, Inc.
1301 McKinney St, Ste 3500
Houston, TX 77071

Notice provided under this provision does not meet the notice requirements for monetary claims against STATE found at N.D.C.C. § 32-12.2-04.

10. CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that 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 STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code chapter 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract. Confidential information shall not include information that is or becomes generally available to the public other than as a result of a breach of a non-disclosure obligation hereunder, is acquired from a third party who, to CONTRACTOR's knowledge, owes no obligation of confidence in respect of the information, or is or has been independently developed by CONTRACTOR.

11. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such request.

12. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including 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 Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this Contract, except to the extent specified in this Contract.

13. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this CONTRACT, whether by merger, reorganization, operation of law, or

otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate in accordance with the Termination for Cause section of this Contract.

CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

14. SPOILIATION – PRESERVATION OF EVIDENCE

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 STATE the opportunity to review and inspect such evidence, including the scene of an accident.

15. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Contract, including the following documents, 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.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- A. The terms of this Contract as may be amended.
- B. STATE's Solicitation: Request for Proposal Number SRC000173; Title: Northern States Power Company, 2026 Natural Gas Rate Increase, Application, Case PU-26-52; 408.26.03.0-01.
- C. CONTRACTOR's written negotiated proposal dated May 20, 2026.
- D. All terms and conditions contained in any end user agreements (e.g. automated click-throughs, shrink wrap, or bonus wrap) are specifically excluded and null and void, and may not alter the terms of this Contract.

16. SEVERABILITY

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

17. 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 adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

18. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Contract STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

19. ATTORNEY FEES

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing Party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

20. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women).

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current all licenses and permits required by law during the Term of this Contract.

CONTRACTOR is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) CONTRACTOR represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that CONTRACTOR boycotts Israel, STATE shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if CONTRACTOR has fewer than ten (10) full-time employees.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

21. STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors if required. CONTRACTOR shall maintain these records for at least four (4) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

22. MISCELLANEOUS

CONTRACTOR is a global firm and, through its practice groups and affiliates, provides a variety of services to third parties on a non-exclusive basis including by way of example and not limitation, Forensic and Litigation Consulting, Technology Services, Corporate Finance/Restructuring, Economic Consulting and Strategic Communications. Other professionals of CONTRACTOR may be engaged by parties with interests that are adverse to and may not be consistent with the interests of STATE. During the pendency of this Contract, the CONTRACTOR professionals providing services hereunder will not provide services in this matter to a party that is adverse to STATE in this matter.

While CONTRACTOR's work may include an analysis of financial and accounting data, the services will not include an audit, compilation or review of any kind of any financial statements or components thereof. STATE will be responsible for any and all financial information it provides to CONTRACTOR during the course of this Contract, and CONTRACTOR will not examine or compile or verify any such financial information. Moreover, the circumstances of the Contract may cause CONTRACTOR's advice to be limited in certain respects based upon, among other matters, the extent of sufficient and available data and the opportunity for supporting investigations in the time period. Accordingly, as part of this Contract, CONTRACTOR will not express any opinion or other form of assurance on financial statements of any party. In the event the services involve prospective financial information, CONTRACTOR's work will not constitute an examination or compilation, or apply agreed-upon procedures, in accordance with standards established by the American Institute of Certified Public Accountants or otherwise, and CONTRACTOR will express no assurance of any kind on such information. There will usually be differences between estimated and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material. CONTRACTOR will take no responsibility for the achievability of results or events projected or anticipated by the STATE.

The parties do not anticipate that the services will involve the transfer or exchange of personal data, personally identifiable information, or protected health information (collectively "Personal Data"). STATE shall immediately notify CONTRACTOR in writing prior to transmitting any Personal Data. If the services shall require the transmission of Personal Data of any kind whatsoever, then the parties shall enter into a mutually agreeable addendum to this Contract prior to the transfer or exchange of such Personal Data in order to address the treatment and handling of such Personal Data. Absent such an addendum, STATE shall not transfer or exchange any Personal Data.

To the extent permitted by N.D.C.C. § 32-12.2-15, STATE agrees that CONTRACTOR's liability to STATE under this Contract for direct damages shall not exceed an amount equal to two times the total value of this Contract. STATE agrees that CONTRACTOR shall not be liable for indirect or consequential damages. Notwithstanding the foregoing, and consistent with N.D.C.C. § 32-12.2-15, no limitation or exclusion of liability under this paragraph shall apply to losses resulting from fraud or other intentional or willful misconduct, breach of confidentiality obligations, tangible property damage, or personal injury. Any liquidated damages or retainage provisions applicable to delay, missed deadlines, or other breaches shall likewise not be subject to the limitations contained in this paragraph. The terms of this paragraph shall survive termination or expiration of this Contract and, to the extent permitted by law, shall apply to any controlling person, director, officer, employee, or affiliate of CONTRACTOR.

Each of CONTRACTOR and the STATE agrees that it will comply with all applicable anti-corruption, anti-money laundering, anti-bribery and other economic sanctions laws and regulations.