

Draft Contract for Private Entities

Contract No. 650

This contract is between the State of North Dakota acting by and through its Industrial Commission, hereafter called Commission, and Megamind Inc, hereafter called Contractor.

1. Independent Contractor

The Contractor shall perform as an independent entity under this agreement. The Contractor, its employees, agents and representatives are not employees of the Commission. No part of this agreement shall be construed to represent the creation of an employer/employee relationship.

2. Statement of Work

a. Contractor agrees to accomplish the following work under this contract: The work to be accomplished is contained in Exhibit A, entitled Data center, which is attached to this contract and is made a part of it.

b. Contractor agrees to provide reports for the work mentioned in Paragraph 2a as follows:

Status Report:	<u>painting</u>
Status Report:	<u>building</u>
Final Report:	<u>networking</u>

The reports shall be in compliance with 43-03-05-08 of the North Dakota Administrative Code. Specifically, the Final Report must include a single page project summary describing the purpose of the project, the work accomplished, the project's results, and the potential applications of the project. Each report must provide documentation verifying the receipt of the private matching funds.

3. Consideration

a. Commission agrees to grant to Contractor an amount not to exceed the sum of \$ 800,000 for accomplishment of the work.

b. The Commission will transfer the \$ 750,000 to the Contractor by interim payments. Payments shall be made according to the following schedule:

Upon execution of the contract	\$ <u>700,000</u>
Upon receipt and consideration of status report	\$ <u>430,000</u>
Upon receipt and consideration of final report	\$ <u>256,000</u>

c. Should the Commission, upon consideration of a report, believe that the report is inadequate or that the Contractor is not complying with the statement of work or satisfactorily carrying out the work, the Commission may withhold all or part of a scheduled payment until the Contractor, in the opinion of the Commission, has remedied the problem causing the withholding.

4. Authority to Contract and Subcontract

The Contractor shall not have the authority to contract for or on behalf of or incur obligations on behalf of the Commission.

Contractor shall not enter into any subcontracts for any of the work scheduled under this contract other than described in Exhibit A without obtaining prior written approval from the Commission.

Should the Contractor obtain prior written approval to enter into a subcontract with a qualified provider of services, the Subcontractor shall acknowledge the binding nature of this agreement and incorporate this agreement together with its attachments as appropriate. The Contractor must agree to be solely responsible for the performance of any Subcontractor.

5. Funds Available and Authorized

Commission certifies at the time the contract is written that sufficient funds are available and authorized for expenditure to finance costs of this contract within the Commission's current appropriation or limitation. It is agreed that in the event the appropriation or funding to the Commission is not obtained and continued at a level sufficient to allow for payments to the Contractor, for the services identified in Paragraph 2, the obligations of each party hereunder terminate upon delivery of written notice to the Contractor.

6. Termination

This contract may be terminated by mutual consent of both parties in writing and delivered by certified mail or in person.

Upon delivery of written notice to the Contractor, the Commission may immediately terminate the whole or any part of this contract if:

- a. The Contractor fails to provide services called for by this contract within the time specified herein or any extension thereof; or
- b. The Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from the Commission, fails to correct such failures within ten days or such longer period as the Commission may authorize.

The rights and remedies of the Commission provided in the above clause related to defaults (including breach of contract) by the Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract. Any such termination of this contract, other than from breach of contract, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

Should the Commission terminate this contract because the Contractor has breached it, the Contractor shall immediately reimburse the Commission the amount of all money the Commission granted the Contractor under this contract.

7. Contract Management

Notwithstanding the Contractor's responsibility for total management responsibility during the performance of the contract, the administration of the contract will require maximum coordination between the Lignite Research Council, the Commission and the Contractor.

Commission's Technical Representative

The Commission's Technical Representative (TR) will be designated on authority of the Commission to monitor all technical aspects and assist in administration of the contract. The

types of actions within the purview of the TR's authority are to assure that the Contractor performs the technical requirements of the contract; to perform or cause to be performed inspections necessary in connection with the performance of the contract; to maintain both written and oral communications with the Contractor concerning the aspects of the written interpretations of the technical requirements of the statement of work; to monitor the Contractor's performance under the contract and notify the Commission of any deficiencies observed.

Commission's Authorized Officer

All contractual administration will be carried out by the Commission's Authorized Officer. Communications pertaining to contract administration matters will be addressed to:

The Industrial Commission of North Dakota
Attention: Karlene Fine
State Capitol 14th Floor
600 E Boulevard Ave Dept 405
Bismarck, North Dakota 58505-0840

The Commission's Authorized Officer is the only person authorized to approve changes in any of the requirements under the contract.

8. Access to Records
The Commission, the State Auditor of the State of North Dakota, and the Office of the Attorney General of the State of North Dakota, and their duly authorized representatives, shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcripts.
9. Compliance with Law
The Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work to be done under this agreement.
10. Indemnity and Insurance
The Contractor shall save and hold harmless the State of North Dakota and the Commission, its officers, agents, employees, and members, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of the Contractor or its subcontractors, agents, or employees under this agreement. The Contractor shall obtain adequate liability insurance coverage, including, at a minimum, the maximum limits on damages established pursuant to N.D.C.C. §32-12.2-02.
11. Ownership of Work Product
All work product of the Contractor resulting from this contract shall be governed by North Dakota Administrative Code Chapter 43-03-06.
12. Nondiscrimination
Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations.
13. Applicable Law
This agreement shall be governed by and construed in accordance with the laws of the State of

North Dakota.

14. Captions
The captions or headings in this agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this agreement.
15. Execution and Counterparts
This agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
16. Amendments
The terms of this agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by the parties.
17. Notices
All notices, certificates or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business as set forth below or at a place designated hereafter in writing by the parties.
- | | |
|---------------------------------------|---------------------------|
| Industrial Commission of North Dakota | <u>Expires 06/04/2021</u> |
| State Capitol, Fourteenth Floor | <u></u> |
| 600 E Boulevard Ave Dept 405 | <u></u> |
| Bismarck, ND 58505-0840 | <u></u> |
18. Successors in Interest
The provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.
19. Attorney Fees
In the event a lawsuit of any kind is instituted on behalf of the state to collect any payment due under this contract, Contractor agrees to pay such additional sums as the court may adjudge for reasonable attorney fees and to pay all costs and disbursements incurred therein.
20. Severability
The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.
21. Waiver
The failure of the state to enforce any provisions of this contract shall not constitute a waiver by the state of that or any other provision.
22. Merger Clause
This agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding

this agreement. Contractor, by the signature below of its authorized representative, hereby acknowledges that the Contractor has read this agreement, understands it, and agrees to be bound by its terms and conditions.

23. Legal Notice/Disclaimer

The following notice shall be contained in all reports intended to be released to the public:

This report was prepared by ---- pursuant to an agreement partially funded by the Industrial Commission of North Dakota and neither --- nor any of its subcontractors nor the Industrial Commission of North Dakota nor any person acting on behalf of either:

(A) Makes any warranty or representation, express or implied, with respect to the accuracy, completeness, or usefulness of the information contained in this report, or that the use of any information, apparatus, method, or process disclosed in this report may not infringe privately-owned rights; or

(B) Assumes any liabilities with respect to the use of, or for damages resulting from the use of, any information, apparatus, method or process disclosed in this report.

Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the Industrial Commission of North Dakota. The views and opinions of authors expressed herein do not necessarily state or reflect those of the Industrial Commission of North Dakota.

(Contractor's Name)

NORTH DAKOTA INDUSTRIAL COMMISSION

By: Mike Baynes
Name
Front End Developer
Title
Date: 18/08/2020

By: Jay Fisher
Karlene Fine
Executive Director
Date: 15/02/2020