

The following is a sample contract for a political subdivision. Each contract is negotiated based on the project, but this will give you the basic provisions that need to be included in every Industrial Commission contract.

This agreement is between the State of North Dakota acting by and through its Industrial Commission, hereafter called "Commission", and XXXXXX, hereafter called "Contractor".

1. Statement of Work

- a. The Contractor agrees to accomplish the work described as XXXXXX, as stated in Exhibit A which is attached to this Agreement and is made a part of it.
- b. Contractor agrees to provide Reports for the work described in Exhibit A as follows:

Status Report: XXXXXX
 Final Report: XXXXXX

The reports/claims shall comply with the Industrial Commission/Outdoor Heritage Fund Program Guidelines, which are available through the online system at <https://grants.nd.gov/index.do> and made part of this Agreement. If requested, the Contractor will provide a tour of the area where the work is being conducted to the Outdoor Heritage Fund Advisory Board members, Commission, and its staff. Each report/claim must provide documentation verifying the expenditure of funds on the project and documentation on the receipt and expenditure of the matching funds.

The project data and reports shall be provided to the Commission through the online system as noted above with permission for unrestricted distribution. The Final Report must provide a project summary describing the purpose of the project, the work accomplished, the project's results, and the value of the project to the citizens of North Dakota.

In addition, the following must be provided:

- (work as outlined in the application will be specifically listed in the contract)
- Information on how the Contractor has publicly acknowledged the Outdoor Heritage Fund's funding of the projects.

2. Consideration

- a. The Commission agrees to grant to Contractor an amount not to exceed \$XXXXXX for accomplishment of the work. The Commission will transfer the funds to the Contractor by interim payments. Payments shall be made according to the following schedule:

Upon receipt of documentation of expenditures and consideration of status reports	\$XXXXXX
Upon receipt of documentation of expenditures and consideration of final report	\$XXXXXX

A minimum X% match must be documented. If utilizing in-kind donations for match, the value must be reported using the Outdoor Heritage Fund In-Kind Match (SFN 61437) which is available at <http://www.nd.gov/ndic/out/Donor%20form.pdf>. If utilizing volunteer labor for match, the value must be reported using the Outdoor Heritage Fund Volunteer Match (SFN 61438) which is available at <http://www.nd.gov/ndic/out/Volunteer%20form.pdf>.

- b. Should the Commission, upon consideration of a report, believe that the report is inadequate, or that the Contractor is not complying with the scope 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 deficiency.

3. Authority to Contract and Subcontract

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

The Contractor may not assign or otherwise transfer or delegate any right or duty without the Commission's express written consent.

The Contractor may, however, enter into subcontracts provided that any subcontractor acknowledges the binding nature of this Agreement and incorporates this Agreement, including any attachments into an agreement with the Contractor. The Contractor must agree to be solely responsible for the performance of any subcontractor. However, nothing, in this clause constitutes a promise by the Contractor to accept responsibility for the tort liability of any subcontractor.

4. Funds Available and Authorized

The Commission certifies that at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within the Commission's current and future appropriation or limitation to June 30, 2021. The Commission by written notice to the Contractor, may terminate the whole or any part of this Agreement 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 Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- c. If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

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

5. Termination

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

The Commission may terminate this Agreement effective upon delivery of written notice to the Contractor, or any later date stated in this notice, if:

- a. The Contractor fails to provide services required by the Agreement within the time specified or any extension agreed to by the Commission; or
- b. The Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

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 Agreement. Any such termination of this Agreement, 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 Agreement because the Contractor has breached it, it is understood that no further funding will be provided to the Contractor.

6. Retirement System Status

Contractor will be responsible for any federal or state taxes applicable to this grant made under this contract. Contractor will not be eligible for any benefits from these contract payments of federal Social Security, unemployment insurance, worker's compensation, or the Public Employees' Retirement System. Contractor is an independent contractor, and neither it or its employees, agents, and representatives are employees of the Industrial Commission.

7. Contract Management

Notwithstanding the Contractor's responsibility for total management of the work described herein and in Exhibit A, the administration of the Agreement will require maximum coordination between the Outdoor Heritage Fund Advisory Board, the Commission and the Contractor.

Outdoor Heritage Fund Director

Either the Industrial Commission's Authorized Officer or the Outdoor Heritage Fund Director (Director) is authorized by the Commission to monitor all technical aspects and assist in administration of the Agreement. The actions within the purview of the Director's authority are to assure that the Contractor performs the technical requirements of the Agreement; to perform or cause to be performed inspections necessary in connection with the performance of the Agreement; 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 Agreement and notify the Commission of any deficiencies.

Commission's Authorized Officer

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

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

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

8. Access to Records

The Commission, Office of the Attorney General of the State of North Dakota, the North Dakota State Auditor and their duly authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to this specific Agreement 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 is a political subdivision. The Contractor shall maintain liability insurance coverage with limits of liability equal to or greater than those damage limits prescribed in N.D.C.C. §32-12.1-03. The Contractor shall require that all subcontractors obtain adequate liability insurance coverage, including at a minimum, the maximum limits on damages established pursuant to N.D.C.C. §32-12.1-03.

The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, 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 that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.

11. Nondiscrimination – Compliance with Laws

The Contractor agrees to comply with all laws, rules and policies, including those relating to nondiscrimination, accessibility and civil rights. The 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. The Contractor shall have and keep current at all times during the term of this Agreement all licenses and permits required by law.

12. Applicable Law and Venue

This Agreement shall be governed by and construed in accordance with 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. Each party consents to the exclusive jurisdiction of such court and waives any claim for lack of jurisdiction or *forum non conveniens*.

13. 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.

14. 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.

15. 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.

16. Severability

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or unenforceable, the validity of the remaining terms and provisions is unaffected, and, if possible, the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

17. Waiver

The failure of the Commission to enforce any provisions of this Agreement shall not constitute a waiver by the Commission of that or any other provision.

18. Merger Clause

This Agreement, including any incorporated attachments, 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.

19. Compliance with Public Records Law

Contractor understands that, except for disclosures prohibited in this Agreement, the Commission must disclose to the public upon request any records it receives from the Contractor. Contractor further understands that any records that are obtained or generated by the Contractor under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. Contractor agrees to contact the Commission immediately upon receiving a request for information under the open records law and to comply with the Commission’s instructions on how to respond to the request.

20. Legal Notice/Disclaimer

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

This report was prepared by XXXXXX pursuant to an agreement with the Industrial Commission of North Dakota which partially funded the project through the Outdoor Heritage Fund.

The XXXXXXX, or any of its subcontractors, and the Industrial Commission of North Dakota, or any person acting on its behalf, do not:

- (A) Make 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) Assume 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.

21. Notices

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

Industrial Commission of North Dakota	XXXXXXXXXXXXXXXX
State Capitol, 14th Floor	XXXXXXXXXX
600 E Boulevard Ave Dept 405	XXXX
Bismarck, ND 58505-0840	XXXXXX, ND XXXXX

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

22. Recognition

The Contractor agrees to post signage recognizing the Outdoor Heritage Fund’s contribution to this project.

23. State Historical Preservation Office

It is the responsibility of the Contractor to coordinate with the State Historical Preservation Office to ensure compliance with all state historical preservation laws.

24. 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

XXXXXXX

NORTH DAKOTA INDUSTRIAL COMMISSION

By: _____
Name

Title
Date: _____

By: _____
Karlene Fine
Executive Director
Date: _____