

Labovitz UofM  
Attachment UMMS 1

UNIVERSITY OF MINNESOTA

Duluth Campus

Bureau of Business and Economics

Labovitz School of Business and Economics

19 SBE

412 Library Drive

Duluth, Minnesota 55812-3029

218-726-8614

FAX: 218-726-6555

<http://sbe.d.umn.edu/ced/bber.htm>

September 20, 2005

Excelsior Energy Inc. of Minnetonka  
ATTN: Tom Micheletti, Co-President  
Mesaba Energy Project  
Crescent Ridge Corporate Center  
11100 Wayzata Boulevard, Suite 305  
Minnetonka, MN 55305

Sum  
9/27/05

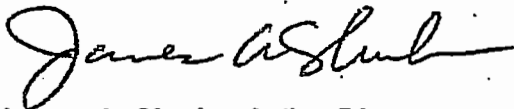
Dear Mr. Micheletti:

Enclosed is the final executed copy of the Services Agreement between "Excelsior Energy Inc. of Minnetonka" and the University of Minnesota – Labovitz School of Business & Economics – Bureau of Business & Economic Research.

As per the Services Agreement regarding compensation, upon receiving the executed copy payment shall be paid in full to the sum of \$10,000.00.

If you have any questions regarding this agreement, please feel free to contact me at 218.726.7895.

Sincerely,



James A. Skurla, Acting Director

ENC: Executed Services Agreement



The Labovitz School of Business and Economics is fully accredited by AACSB-The International Association for Management Education, the premier accrediting organization for business schools worldwide.



UNIVERSITY OF MINNESOTA

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the "Agreement") is entered into effective as of July 1, 2005, by and between the Regents of the University of Minnesota (the "University"), a Minnesota constitutional corporation, and Excelsior Energy, Inc. of Minnetonka (the "Company"), a Corporation. This agreement is entered into by the University through its Labovitz School of Business and Economics - Bureau of Business and Economic Research.

NOW, THEREFORE, the parties agree as follows:

- 1. Description of Services. The University shall render the following services (reference to services in this Agreement shall be deemed to include any deliverables):

The UMD Bureau of Business and Economic Research (BBER) will study and estimate the economic impacts of a new coal gasification power generating facility in Northeast Minnesota. The economic model to be used will be IMPLAN. The results will be presented in a written report and PowerPoint presentation that will be delivered to the Company in draft form on or before September 1, 2005, with the final written report and PowerPoint presentation to be delivered to the Company on or before September 30, 2005.

- 2. Compensation. For the services rendered under section 1, the Company shall pay the University 10,000 and 00/100 dollars (\$10,000.00).

The compensation shall be paid: (Check one of the two boxes)

- [X] in full upon the signing of this Agreement; or
[ ] in installments, payable on the following dates:

- 3. Term. The term of this Agreement shall commence on: (Check one of the two boxes)

- [X] the date first above written; or
[ ] on

The term of this Agreement shall expire on September 30, 2005, unless terminated earlier as provided in section 4.

- 4. Termination. Either party may terminate this Agreement for material breach on seven (7) days' written notice, during which period the breaching party may cure. Additionally, either party may terminate this Agreement for its convenience upon thirty (30) days' prior written

notice to the other party. Upon termination, the Company shall promptly pay the University for all services rendered and costs incurred up to and including the effective date of termination.

**5. Limitation of Damages.** EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, IN NO EVENT SHALL THE UNIVERSITY BE LIABLE, FOR (i) PERSONAL INJURY OR PROPERTY DAMAGES OR (ii) LOST PROFITS, WORK STOPPAGE, LOST DATA, OR ANY OTHER SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OF ANY KIND.

**6. Limitation of Remedies.** IN THE EVENT OF THE UNIVERSITY'S BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THIS AGREEMENT, THE UNIVERSITY'S ENTIRE LIABILITY AND THE COMPANY'S EXCLUSIVE REMEDY SHALL BE, AT THE UNIVERSITY'S OPTION, EITHER (i) RETURN OF THE MONETARY CONSIDERATION PAID TO THE UNIVERSITY UNDER THIS AGREEMENT OR (ii) THE UNIVERSITY'S PERFORMANCE OF ANY OBLIGATION THAT FAILED TO SATISFY THE TERMS OF THIS AGREEMENT.

**7. Disclaimer of Warranties.** THE UNIVERSITY DISCLAIMS AND EXCLUDES ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONCERNING THE SERVICES PROVIDED UNDER THIS AGREEMENT. THE PARTIES ACKNOWLEDGE AND AGREE THE SERVICES SHALL BE PROVIDED AND ACCEPTED "AS IS."

**8. No University Endorsements.** In no event shall the Company (or its successors, employees, agents and contractors) state or imply in any publication, advertisement, or other medium that the University has approved, endorsed or tested any product or service. In no event shall the University's performance of the services described in section 1 be considered a test of the effectiveness or the basis for any endorsement of a product or service.

**9. Use of University Name or Logo.** The Company agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the University or the name of any representative of the University in any sales promotion work or advertising, or any form of publicity, without the prior written permission of the University in each instance.

**10. Indemnification.**

10.1. The Company shall indemnify, defend and hold the University and its regents, faculty members, students, employees, agents and contractors harmless from actions, suits, claims, negligent losses, costs, judgments and expenses, including reasonable attorneys' and investigative fees, arising out of: (i) the Company's infringement of a third party's intellectual property rights or violation of any law, rule, or regulation in the provision of any materials to the University; (ii) personal injury, death or property damages arising out of a failure to warn the University of any dangerous substances or materials supplied to the University by or on behalf of the Company; (iii) the Company's, or any other entity's, use of the results or deliverables, or the

use of products, services or representations based on such results or deliverables; and (iv) any negligent act or omission of the Company in connection with this Agreement.

10.2. Subject to the limitations of damages and remedies set forth in this Agreement, the University shall indemnify and hold the Company and its directors, employees, agents and contractors harmless from actions, suits, claims, losses, costs, judgments and expenses, including reasonable attorney and investigative fees, arising out of the University's negligent acts and omissions in performing its duties under this Agreement.

10.3. Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance under this Agreement, the Company shall obtain and keep in force comprehensive general and professional liability insurance, including coverage for death, bodily or personal injury, and property damage, including products liability, with limits of not less than \$1,000,000 each claim and \$3,000,000 each occurrence, and automobile coverage with limits not less than \$1,000,000 each occurrence. ~~\*\*All such certificates evidencing such insurance shall name the Regents of the University of Minnesota as an additional insured.~~ The Company represents that it has workers' compensation insurance to the extent required by law. The Company agrees to furnish proof of all such insurance to the University upon request.

*KS*  
*Jan*  
*RS*  
11. **Publications.** In accordance with Regents Policy on Publication of Investigation Results, the University reserves the right to publish the results of research or investigation related to the services performed under this Agreement. Before publishing, however, it will give the Company an opportunity to review the manuscript and will consider suggested modifications. The Company shall be furnished copies of any proposed publication or presentation at least thirty (30) days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. The Company shall have thirty (30) days after receipt of said copies, to object to such proposed presentation or proposed publication, either because there is patentable subject matter that needs protection and/or there is information that the Company regards as trade secret, confidential or proprietary, in the proposed publication or presentation, and to propose modifications. In the event that the Company makes an objection based on patentable subject matter, the University shall refrain from making such publication or presentation for a maximum of ninety (90) days from date of receipt of such objection in order for the University to file patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation. In the event that the Company makes an objection concerning information that it regards as trade secret, confidential or proprietary, the University will consider the Company's objection and suggested changes in good faith.

## 12. General Provisions.

12.1. **Amendment.** This Agreement shall be amended only in a writing duly executed by all the parties to this Agreement.

12.2. **Assignment.** The Company may not assign any rights or obligations of this Agreement without the prior written consent of the University. In the event of any assignment, the Company shall remain responsible for its performance and that of any assignee under this

Agreement. This Agreement shall be binding upon the Company, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement shall be void at the sole option of the University.

**12.3. Entire Agreement.** This Agreement (including all attached or referenced addenda, exhibits, and schedules) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement. The terms and conditions of any purchase order or similar document submitted by the Company in connection with the services provided under this Agreement shall not be binding upon the University.

**12.4. Force Majeure.** No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure the parties' duty to perform obligations shall be suspended.

**12.5. Governing Law.** The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles.

**12.6. Jurisdiction.** All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hennepin County, Minnesota.

**12.7. Independent Contractor.** In the performance of their obligations under this Agreement, the parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, partners, joint ventures, or employees. Neither party shall have the right or power to bind the other party and any attempt to enter into an agreement in violation of this section 12.7 shall be void. Neither party shall take any actions to bind the other party to an agreement.

**12.8. Notices.** All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the other party at its address set forth below or to such other address as such party may designate by notice given pursuant to this section:

If to the University: University of Minnesota  
Attention: James A. Skurla, Acting Director  
UMD- Bureau of Business and Economic Research  
412 Library Dr., SBE 19

Duluth, MN 55812  
Facsimile No.: 218.726.8614  
E-mail: jskurla@d.umn.edu

With a copy to: University of Minnesota  
Office of the General Counsel  
Attn: Transactional Law Services Group  
360 McNamara Alumni Center  
200 Oak Street S.E.  
Minneapolis, MN 55455-2006  
Facsimile No.: (612) 626-9624  
E-mail: contracts@mail.ogc.umn.edu

If to the Company: Excelsior Energy Inc. of Minnetonka  
Attention: Tom Micheletti, Co-President  
Mesaba Energy Project  
11100 Wayzata Boulevard, Suite 305  
Minnetonka, MN 55305  
Facsimile No.: 952.847.2373  
E-mail: tommicheletti@excelsiorenergy.com

**12.9. Breach; Attorneys' Fees.** In the event it fails to perform any of its duties under this Agreement, the Company shall reimburse the University for all the University's costs and expenses (including reasonable attorneys' fees, court costs, and costs of investigation) to enforce this Agreement, regardless of whether a suit or action had been commenced or concluded.

**12.10. Survival.** Upon termination or expiration of this Agreement, Sections 2, 5, 6, 7, 8, 9, 10, 11, and 12 shall survive.

IN WITNESS WHEREOF, the parties have entered into the Agreement as of the date first above written.

Regents of the University of Minnesota

Excelsior Energy Inc. of Minnetonka

By: 

By: 

Name: LaCretia Bell

Name: Tom Micheletti

Title: Director of External Sales

Title: Co-President

Date: 9/8/05

Date: August 26, 2005

\*\* Excelsior Energy on 08/19/2005 requested omission of statement, request authorized per Arnie Frishman, Office of General Counsel, 08/24/2005.