

## LOBBYING ACTIVITIES ON BEHALF OF EXCELSIOR ENERGY

### BACKGROUND

Both of Excelsior's Principals have been registered as lobbyists since November 2001. Legislation for the Mesaba Energy Project was introduced in the 2002 and 2003 sessions of the Minnesota Legislature but did not pass until the special session in 2003. In subsequent sessions Excelsior's agents lobbied for: an exemption from the personal property tax levied on utilities and deletion of language in the original exemption bill that required a brownfield site; exemption from the 2007 moratorium on construction of new coal-fired plants; and other matters. The attached chart lists Excelsior's lobbyists over the years and shows that eight lobbyists from the Lockridge firm were registered on behalf of Excelsior at least as early as July 2002. Two Lockridge lobbyists were registered as of 1/1/02 with the federal government (attached). Excelsior's annual Principal's reports show a total of \$640,000 expended by the end of 2006 (amounts for 2007 not available). Additional lobbying has occurred at the federal level (various reports of < \$10,000, \$40,000 in the first half of 2006 to Ronald Jeffrey Schultz [attached], and extensive payments to D.C. and Philadelphia law firms). Given Excelsior's reliance on public funding, which may not be used for lobbying, it is reasonable to question how these lobbying expenses were paid.

### LOCKRIDGE GRINDAL NAUEN

The Lockridge firm is well known for its Governmental Relations department, which includes non-attorney lobbyists. As early as April 2002 one of them was Kathleen Micheletti, wife of Pat Micheletti, brother of Tom Micheletti. In January 2007 she left Lockridge and became a V.P. of Excelsior. The Lockridge firm did some legal work for Excelsior in April 2002, as evidenced by a 4/26/02 Opinion Letter sent to the IRR. However, the bulk of the legal work at the Public Utilities Commission on this project did not start until fall 2004, when it was done by Leonard Street & Deinard. It is not apparent what other legal work might have been done by Lockridge during the time that they are known to have been lobbying.

In 2002 and 2003 Excelsior's focus was on the desired legislation. In a 4/6/02 e-mail (attached) Julie Jorgensen refers to Lockridge as "the firm that has been doing the legislative-legal work for us", which is supported by the chart of lobbyists for 2002, 2003 and into 2004, at which time all of the Lockridge lobbyists terminated their registration on behalf of Excelsior.

### *\$126,479 to Lockridge: March 2002 to March 2003*

The first \$500,000 from the IRR was disbursed pursuant to three requests (attached) from Thomas Micheletti, who affirmed and attested that the enclosed invoices were valid. These three requests show that \$126,479 of the first \$500,000 was paid to the Lockridge firm:

- 1) 4/25/02 request showed two payments totalling \$30,815.84 for "legal fees" through 3/31/02.
- 2) 11/15/02 request listed \$39,381.83 in "legal fees" paid to the Lockridge firm.
- 3) 3/30/03 request listed \$21,000 and \$35,282.23 for "Legal/Consulting Services".

CAMP questioned the IRR about the absence of these invoices from the documents inspected. Deputy Commissioner Hiti's response was inherently contradictory: he stated that these three reimbursement requests do not exist, but he also claimed that the invoices were in the documents made available to CAMP. We have renewed our request for these invoices.

*11/5/03 Final Accounting - Lockridge's \$126,479 Disappears*

The invoices are important because in an 11/5/03 "final accounting" (attached) by Micheletti of how these first three disbursements were spent, all references to the Lockridge firm disappeared and the expenditures were allocated to other vendors who either did not appear or had smaller amounts in the first three reports. The Lockridge firm was the only vendor to completely disappear in the "final accounting", and more than \$75,000 of the discrepancy was redistributed to three of Excelsior's long-term "consultants": Browers, Sherner Power, and Ceteris (which is really William Ruzynski, who has been a VP of Excelsior since at least October 2004).

*Lockridge References in 4/30/02 Closing Liabilities reported to IRR*

- \$50,000 "deferred retainer fees" payable to Lockridge December '02 (no documentation);
- \$800/month rent paid by Excelsior to Lockridge, commencing January '02, "currently due and payable".

This rent is puzzling because in April '02 the Convertible Debenture Agreement shows the address for Excelsior to be the same as the home address of its Principals. This address was also used in contracts with consultants in June and July 2003. By November '03 Excelsior used the address of 294 Grove Lane E., No. 260, Wayzata; this is documented by rent invoices. In the fall of 2004 it moved to its current address at 11100 Wayzata Boulevard. No document has been found showing that Excelsior ever used the Lockridge address.

*5/5/04 Lockridge Retainer Letter and Fee Agreement (attached)*

This letter, accepted and countersigned by Julie Jorgensen on behalf of Excelsior Energy, sets forth detailed terms for "continued legislative and legal representation". It notes that \$50,000 is due for the balance of the "2003 governmental relations contract", and specifies lump sums for the state and federal government relations contracts for 2004 and 2005. It separately lays out the manner in which legal services will be billed, stating that they will be based on hourly rates. It assumes that Lockridge will be doing the extensive legal work in the dockets at the PUC, both on the power purchase agreement and the siting permits, as well as other environmental review and permitting. Despite this retainer agreement, the Leonard Street & Deinard firm started doing this work at least as early as September 2004 and it appears that the relationship between Lockridge and Excelsior was terminated about that time .

*12/1/04 Invoice \$80,927.12 (attached)*

Included with the 12/24/04 IRR disbursement was an invoice from Lockridge for "General and Administrative Advice" and "Legal services rendered from August 2003 to August 2004". Given the date of the invoice and the time period covered, it appears to be for payment(s) previously deferred. The 5/5/04 letter indicates that the only deferred fees were for governmental relations work, and there is no indication that Lockridge did any legal work between 5/5/04 and August '04. Because the invoice has been redacted, one cannot determine what services were being billed but it seems likely that it was for lobbying activities.

### Excelsior Energy Lobbyists from Lockridge Grindal Nauen

7/1/2002 thru 6/30/2003	6/1/2003 thru 5/31/2004	6/1/2004 thru 5/31/2005
Gallaher, Harry	Gallaher, Harry	Gallaher, Harry
Genia, James M.	Genia, James M.	Genia, James M.
Grindal, Theodore H.	Grindal, Theodore H.	Grindal, Theodore H.
Klett, Rebecca	Klett, Rebecca	Klett, Rebecca
McGrann, Dennis M.	McGrann, Dennis M.	McGrann, Dennis M.
Micheletti, Kathleen K.	Micheletti, Kathleen K.	Micheletti, Kathleen K.
Sandberg, Christopher K.	Sandberg, Christopher K.	Sandberg, Christopher K.
Zagrabelny, Rachel	Zagrabelny, Rachel	Zagrabelny, Rachel

### Excelsior Energy Lobbyists from Cook Girard Hill

7/1/2002 thru 6/30/2003	6/1/2003 thru 5/31/2004	6/1/2004 thru 5/31/2005	1/1/2005 thru 12/31/2005	1/1/2006 thru 12/31/2006	Newly Registered in 2007
Cook, Judy E.	Cook, Judy E.	Cook, Judy E.	Cook, Judy E.	Cook, Judy E.	Kavanagh, John (1/9/2007)
Girard, James L.	Girard, James L.	Girard, James L.	Girard, James L.	Girard, James L.	
Hill, Todd A.	Hill, Todd A.	Hill, Todd A.	Hill, Todd A.	Hill, Todd A.	
		Kajer, Andrea	Kajer, Andrea	Kajer, Andrea	

### Excelsior Energy Lobbyists from Leonard Street & Deinard

7/1/2002 thru 6/30/2003	6/1/2003 thru 5/31/2004	6/1/2004 thru 5/31/2005	1/1/2005 thru 12/31/2005	1/1/2006 thru 12/31/2006
		Bertrand, James J.	Bertrand, James J.	Bertrand, James J.
		Meloy, Brian M.	Meloy, Brian M.	Meloy, Brian M.
		Kelley, Timothy M.	Kelley, Timothy M.	Kelley, Timothy M.
		Starns, Byron E.	Starns, Byron E.	Schultz, Ronald J.
				Seltzer, Matthew
				Starns, Byron E.

### Lobbyists from Excelsior Energy

7/1/2002 thru 6/30/2003	6/1/2003 thru 5/31/2004	6/1/2004 thru 5/31/2005	1/1/2005 thru 12/31/2005	1/1/2006 thru 12/31/2006	Newly Registered in 2007
Jorgensen, Julie	Jorgensen, Julie	Evans, Robert S.	Evans, Robert S.	Evans, Robert S.	Micheletti, Kathleen (2/6/07)
Micheletti, Thomas A.	Micheletti, Thomas A.	Jorgensen, Julie	Jorgensen, Julie	Greenman, Christopher	
		Micheletti, Patrick	Micheletti, Patrick	Jorgensen, Julie	
		Micheletti, Thomas A.	Micheletti, Thomas A.	Kieves, Nicola	
		Wadley, Michael	Wadley, Michael	Micheletti, Patrick	
				Micheletti, Thomas A.	
				Osteraas, Thomas	
				Wadley, Michael	

### Other Lobbyists Registered as Representing Excelsior Energy

7/1/2002 thru 6/30/2003	6/1/2003 thru 5/31/2004	6/1/2004 thru 5/31/2005	1/1/2005 thru 12/31/2005	1/1/2006 thru 12/31/2006	Newly Registered in 2007
Moore-Lindman, Marnie	Moore-Lindman, Marnie	Johnson, Douglas J.	Johnson, Douglas J.	Johnson, Douglas J.	Conover, David W.
Weaver, Thomas H.		Moore-Lindman, Marnie	Moore-Lindman, Marnie		

### Total Lobbying Disbursements Reported by Lobbyists Listed for Excelsior Energy

Document	Administration Disbursement	Legislative Disbursement	Metro Govt Disbursement	Total Disbursement	Principal Annual Report
9/23/02		\$36,408.00		\$36,408.00	
7/1/2002 thru 6/30/2003		\$97,665.00		\$97,665.00	\$60,000.00
6/1/2003 thru 5/31/2004		\$65,403.00		\$65,403.00	\$100,000.00
6/1/2004 thru 5/31/2005	\$7,945.00	\$18,730.00		\$26,675.00	\$60,000.00
1/1/2005 thru 12/31/2005	\$2,364.00	\$33,243.00		\$35,607.00	\$40,000.00
1/1/2006 thru 12/31/2006	\$33,241.00	\$34,135.00	\$2,751.00	\$70,127.00	\$380,000.00
<b>Totals</b>	<b>\$43,550.00</b>	<b>\$285,584.00</b>	<b>\$2,751.00</b>	<b>\$331,885.00</b>	<b>\$640,000.00</b>

Clerk of the House of Representatives  
Legislative Resource Center  
9-106 Cannon Building  
Washington, DC 20515

Secretary of the Senate  
Office of Public Records  
232 Hart Building  
Washington, DC 20510

RECEIVED  
SECRETARY OF THE SENATE  
02 FEB 19 AM 10:34

## LOBBYING REGISTRATION

Lobbying Disclosure Act of 1995 (Section 4)

Check if this is an Amended Registration ☐

1. Effective Date of Registration 1/1/2002

2. House Identification Number \_\_\_\_\_

Senate Identification Number \_\_\_\_\_

### REGISTRANT

3. Registrant name Lockridge Grindol Nauen, P.L.L.P

Address 600 Pennsylvania Avenue S.E. Suite 304

City Washington

State DC

Zip 20003

4. Principal place of business (if different from line 3)

City \_\_\_\_\_

State/Zip (or Country) \_\_\_\_\_

5. Telephone number and contact name

(202) 644-0840

Contact Donnis McGrann

E-mail (optional) \_\_\_\_\_

6. General description of registrant's business or activities

Federal Relations

**CLIENT** *A lobbying firm is required to file a separate registration for each client. Organizations employing in-house lobbyists should check the box below "Self" and proceed to line 18.* ☐ Self

7. Client name Excalibur Energy, Inc

Address 519 Ferndale Road North

City Wayzata

State MN

Zip 55391

8. Principal place of business (if different from line 7)

City \_\_\_\_\_

State/Zip (or Country) \_\_\_\_\_

9. General description of client's business or activities

Energy

### LOBBYISTS

10. Name of each individual who has acted or is expected to act as a lobbyist for the client identified on line 7. If any person listed in this section has served as a "covered executive branch official" or "covered legislative branch official" within two years of first acting as a lobbyist for the client, state the executive and/or legislative position(s) in which the person served.

Name	Covered Official Position (if applicable)
<u>Donnis McGrann</u>	
<u>Amy Johnson</u>	

Clear all data and reset fields

Clerk of the House of Representatives  
Legislative Resource Center  
B-106 Cannon Building  
Washington, DC 20515

Secretary of the Senate  
Office of Public Records  
232 Hart Building  
Washington, DC 20510

SECRETARY OF THE SENATE  
06 AUG 18 PM 1:29  
**LOBBYING REPORT**

Lobbying Disclosure Act of 1995 (Section 5) - All Filers Are Required to Complete This Page

1. Registrant name			
Mr. Ronald Schultz			
2. Address <input type="checkbox"/> Check if different than previously reported			
150 South Fifth Street, Suite 2300			
Minneapolis		MN	55402 USA
3. Principal place of business (if different than line 2)			
City	State/Zip/Country		
4a. Contact Name	b. Telephone number	c. E-mail	5. Senate ID #
Mr. Ronald Schultz	612-335-1500	ronald.schultz@excelsior.com	303852-12
6. Client Name <input type="checkbox"/> Self	7. House ID #		
Excelsior Energy, Inc.	38199000		

**TYPE OF REPORT** 8. Year 2006 Midyear (January 1-June 30) ☒ OR Year End (July 1-December 31) ☐

9. Check if this filing amends a previously filed version of this report ☐10. Check if this is a Termination Report ☐ ⇨ Termination Date \_\_\_\_\_11. No Lobbying Activity ☐**INCOME OR EXPENSES - Complete Either Line 12 OR Line 13**

<b>12. Lobbying Firms</b>  INCOME relating to lobbying activities for this reporting period was:  Less than \$10,000 <input type="checkbox"/> \$10,000 or more <input checked="" type="checkbox"/> ⇨ \$ <u>40,000</u>  Provide a good faith estimate, rounded to the nearest \$20,000, of all lobbying related income from the client (including all payments to the registrant by any other entity for lobbying activities on behalf of the client).	<b>13. Organizations</b>  EXPENSES relating to lobbying activities for this reporting period were:  Less than \$10,000 <input type="checkbox"/> \$10,000 or more <input type="checkbox"/> ⇨ \$ _____  <b>14. REPORTING METHOD.</b> Check box to indicate expense accounting method. See instructions for description of options. <input type="checkbox"/> Method A. Reporting amounts using LRA definitions only <input type="checkbox"/> Method B. Reporting amounts under section 6033(h)(8) of the Internal Revenue Code <input type="checkbox"/> Method C. Reporting amounts under section 162(e) of the Internal Revenue Code
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Senate Password

Signature Ronald Schultz Date 8/11/2006  
 Printed Name and Title Ronald J. Schultz, Lobbyist

LH-285 (Rev. 4/07)

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# Excelsior Energy Inc.

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294 Grove Lane East · Suite 260 · Wayzata, MN 55391  
Phone: 952-404-4103 · Fax: 952-404-4104

November 5, 2003

Mr. Michael J. Larson  
Energy Director  
Iron Range Resources and Rehabilitation Agency  
P.O. Box 441  
Eveleth, MN 55734

Dear Mike,

Attached is our final accounting for the first tranche of the loan under the Debenture Agreement between Excelsior Energy Inc. and Iron Range Resources.

The loan proceeds, totaling \$500,000, were used to reimburse the following invoiced project costs:

1. Engineering and environmental services	\$ 76,299.77
2. Verification of project economics and load forecasts	115,204.81
3. Transmission analysis and development	49,747.67
4. Project development services	78,244.07
5. Payroll and State/Federal withholding	126,809.32
6. Office, travel and administrative expense	56,601.50
7. Legal fees	9,978.50
8. Accounting/tax services	1,397.50
 TOTAL	 \$514,283.14

Please contact me should you have questions. Thank you.

Sincerely,

Thomas Micheletti  
Excelsior Energy Inc.  
Principal

Attachment

EXCELSIOR ENERGY INC.  
FINAL ACCOUNTING FOR INITIAL IRR FUNDING

PAID TO	AMOUNT
Acres Management Consulting	49,747.67
Browers Consulting LLC	10,885.68
Ceteris, Inc.	53,523.68
Chadbourne and Park	8,380.00
Faegre & Benson	1,598.50
Freeberg and Freeberg/ LeClair Accounting Service	1,397.50
HDR Engineering	17,346.05
ICF Resources	107,004.81
Nazar Massouh Financial Analysis	8,200.00
Miscellaneous Office, Travel & Admin.	56,601.50
Payroll	87,355.18
S E H	8,953.72
Science Applications Int'l Corp	50,000.00
Sherner Power Consulting	13,834.71
State and Federal Withholding	39,454.14
<b>TOTAL</b>	<b>514,283.14</b>



**EXCELSIOR ENERGY, INC.**  
**FINAL ACCOUNTING FOR INITIAL IRR FUNDING**

<b>Mesaba Energy Project</b> <b>Reimbursable Project Expenses – 2002-2003</b> <b>Supporting disbursement of initial \$500,000 loan by IRRRB</b>			
<b>Paid to</b>	<b>Description</b>	<b>Check No.</b>	<b>Amount</b>
Acres Management Consulting	Transmission Studies, Analysis and Development	1109, 1118, 1132, 1144	\$49,747.67
Browers Consulting LLC	Engineering and Project Consulting	1152, 1157, 1160	\$10,885.68
Ceteris, Inc.	Project Development and Consulting Services	1115, 1125, 1130, 1146, 1150, 1167, 1175	\$53,523.68
Chadbourn and Park	Legal Services	1134, 1143, 1156	\$8,380.00
Faegre & Benson	Legal Fees	1025, 1026, 1059	\$1,598.50
Freeberg and Freeberg LeClair Accounting Service	Tax and accounting services	1091, 1092, 1116	\$1,397.50
HDR Engineering	Site Analysis, Engineering and Environmental Services	1074, 1082, 1097, 1112, 1135, 1168	\$17,346.05
ICF Resources	Project Economics, Load Forecasting, Transmission Analysis	1007, 1045, 1076	\$107,004.81
Nazar Massouh	Preparation of Project Financial Model	1085	\$8,200.00
Miscellaneous	Office, Travel and Administrative Expenses	1002, 1003, 1005, 1006, 1009, 1012, 1014, 1015, 1017, 1022, 1023, 1028, 1030, 1031, 1032, 1033, 1036, 1037, 1039, 1041, 1048, 1053-8, 1060, 1061, 1063-6, 1069, 1071-3, 1077-80, 1084, 1086, 1088, 1089, 1093-5, 1098-9, 1101-4, 1107-8, 1110-1, 1113, 1119, 1120-1, 1123, 1127-29, 1131, 1133, 1137-42, 1147-49, 1153, 1155, 1158-59, 1164, 1166, 1172-73	\$56,601.50

**EXCELSIOR ENERGY, INC.**  
**FINAL ACCOUNTING FOR INITIAL IRR FUNDING**

<b>Mesaba Energy Project</b> <b>Reimbursable Project Expenses – 2002-2003</b> <b>Supporting disbursement of initial \$500,000 loan by IRRRB</b>			
<b>Paid to</b>	<b>Description</b>	<b>Check No.</b>	<b>Amount</b>
Payroll	Salaries of Employees	1068, 1081, 1100, 1010, 1011, 1013, 1020, 1021, 1038, 1042, 1043, 1044	\$87,355.18
SEH	Site Engineering and Environmental Analysis	1169	\$8,953.72
Science Applications Int'l. Corp.	Engineering and Environmental Services	1001, 1008, 1016	\$50,000.00
Shermer Power Consulting	Transmission, Engineering and Project Consulting	1151, 1161, 1162	\$13,834.71
State and Federal Withholding (employee income)	Tax Payments, Withholding	1019, 1040, electronic, 1046, 1047, 1049, 1070, 1090, 1105, electronic (2/19/03), electronic (8/19/02)	\$39,454.14
<b>TOTAL</b>			<b>\$514,283.14</b>

April 25, 2002

Mike J. Larson  
Energy Director  
Iron Range Resources and Rehabilitation Agency  
PO Box 441  
Eveleth, MN 55734

Dear Mike;

In accordance with the agreement between Excelsior Energy, Inc. and the Office of the Commissioner of the Iron Range Resources and Rehabilitation, enclosed you will find invoices totaling \$250,000.00 for work completed to date on this project.

Excelsior Energy, Inc. hereby requests reimbursement from the IRRR Agency, according to our agreement in the amount of \$250,000.00.

I, Thomas Micheletti, president of Excelsior Energy Inc., affirm and attest that the invoices are valid and that the services described therein were duly rendered.

Sincerely,

Thomas Micheletti  
President  
Excelsior Energy, Inc.

## State of Minnesota Office Memorandum

### Iron Range Resources and Rehabilitation Agency

P.O. Box 441  
1006 Hwy 53 South  
Eveleth, MN 55734-0441  
Phone: (218) 744-7400  
1-800-765-5043  
FAX: (218) 744-7401  
(218) 744-7402



**To:** Dave Hart

**From:** Mike Larson *ML*

**Date:** May 6, 2002

**Re:** EXCELSIOR ENERGY REIMBURSEMENT REQUEST

---

Attached is a reimbursement request with invoices for the Excelsior Energy Project. Please take the necessary steps to process the payment. Thanks!

Mesaba Energy Project  
Reimbursable Project Expenses – through March 31, 2002

DATE			
PAID TO	DESCRIPTION	CHECK NOS.	AMOUNT
SCIENCE APPLICATIONS INT'L CORP.	Engineering and Environmental Services	1001, 1008, 1016	50,000
ICF RESOURCES	Project Economics, Load Forecasting, Transmission Analysis	1007, 1045	97,944.81
PAYROLL	Salaries of Employees through 4/31	1010, 1011, 1013 1020, 1021, 1038, 1042, 1043, 1044	41,271.52
LOCKRIDGE, GRINDAL & NAUEN	Legal Fees	1004, 1024	30,815.84
FAEGRE & BENSON	Legal Fees	1025, 1026	1,181.25
MISCELLANEOUS	Office and Administrative Expenses	1002, 1003, 1005, 1006, 1009, 1012, 1014, 1015, 1017, 1022, 1023, 1028, 1030, 1031, 1032, 1033, 1036, 1037, 1039, 1041	19,127.55
STATE AND FEDERAL GOVT.	Tax payments, withholding	1019, 1040, electronic	8,374.60
TOTAL			\$248,715.57

November 15, 2002

Michael J. Larson  
Energy Director  
Iron Range Resources and Rehabilitation Agency  
P.O. Box 441  
Eveleth, MN 55734

Dear Mike:

In accordance with the agreement between Excelsior Energy, Inc. and the Office of the Commissioner of the Iron Range Resources and Rehabilitation Agency, enclosed please find invoices totaling \$136,863.39 for the work completed since our reimbursement submittal dated April 25, 2002.

Excelsior Energy, Inc. hereby requests reimbursement from the Iron Range Resources and Rehabilitation Agency, pursuant to our agreement, in the amount of \$136,863.39.

I, Thomas A. Micheletti, the undersigned, President of Excelsior Energy, Inc. do hereby affirm and attest that the invoices presented are valid and that the services described therein were duly rendered.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Micheletti".

Thomas A. Micheletti  
President  
Excelsior Energy, Inc

# State of Minnesota Office Memorandum

## Iron Range Resources and Rehabilitation Agency

P.O. Box 441  
1006 Hwy 53 South  
Eveleth, MN 55734-0441  
Phone: (218) 744-7400  
1-800-765-5043  
FAX: (218) 744-7401  
(218) 744-7402



**To:** Dave Hart

**From:** Mike Larson *MSL*  
Energy Initiative Director

**Date:** November 25, 2002

**Re:** EXCELSIOR ENERGY REIMBURSEMENT REQUEST

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Attached is a reimbursement request with invoices for the Excelsior Energy Project. Please take the necessary steps to process the payment. Thank You.

*Done, please process \$135,000.*

*Thanks*

Mesaba Energy Project  
Reimbursable Project Expenses---April 25, 2002 through November 15, 2002

<u>PAID TO</u>	<u>DESCRIPTION</u>	<u>CHECK NOS</u>	<u>AMOUNT</u>
HDR ENGINEERING	Site Engineering and Environmental Services	1074, 1082	\$10,888.50
ICF RESOURCES	Project Economics and Load Forecast Studies	1076	9,060.00
PAYROLL	Salary of Employee to November 15, 2002	1068, 1081	33,941.00
LOCKRIDGE, GRINDAL	Legal Fees	1062, 1075, 1083	39,381.83
FAEGRE & BENSON	Legal Fees	1059	417.25
NAZAR MASSOUH	Preparation of Project Financial Model	1085	8,200.00
MISCELLANEOUS	Office, Travel and Administrative Expenses	1048, 1053 - 1058, 1060, 1061, 1063 - 1066, 1069, 1071 - 1073, 1077 - 1080, 1084	19,692.27
STATE & FEDERAL WITHHOLDING	Tax Payments, Withholding	1046, 1047 1049, 1070	15,282.54
TOTAL			\$136,863.39



March 30, 2003

Michael J. Larson  
Energy Director  
Iron Range Resources and Rehabilitation Agency  
P.O. Box 441  
Eveleth, MN 55734

Dear Mike:

In accordance with the agreement between Excelsior Energy Inc. and the Office of the Commissioner of the Iron Range Resources and Rehabilitation Agency, enclosed please find invoices totaling \$137,074.61 for the work completed since our reimbursement submittal dated November 15, 2002.

Excelsior Energy hereby requests reimbursement of the above amount.

I, Thomas Micheletti, the undersigned, President of Excelsior Energy Inc., hereby affirm and attest that the invoices presented are valid and that the services described therein were duly rendered.

Sincerely,

*Thomas A. Micheletti*

Thomas A. Micheletti  
President  
Excelsior Energy Inc.

# State of Minnesota Office Memorandum

## Iron Range Resources and Rehabilitation Agency

P.O. Box 441  
1006 Hwy 53 South  
Eveleth, MN 55734-0441  
Phone: (218) 744-7400  
1-800-765-5043  
FAX: (218) 744-7401  
(218) 744-7402



**To:** Dave Hart

**From:** Mike Larson  
Energy Initiative Director

**Date:** April 8, 2003

**Re:** EXCELSIOR ENERGY REIMBURSEMENT REQUEST

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Attached is a reimbursement request with invoices for the Excelsior Energy Project. Please take the necessary steps to process the payment. Thank You.

*Done - Please process \$115,000.*

*Thanks*

*Loan # 200517*

Mesaba Energy Project Reimbursable Project Expenses – November 16, 2002 – March 30, 2003			
Paid to	Description	Check No.	Amount
HDR Engineering	Site Analysis	1097	1799.73
		1112	2910.28
Payroll	Salary – employee (through 12/31/02)	1100	12,142.66
Freeberg and Freeberg LeClair Accounting Service	Tax and accounting services	1091	245.00
		1092	820.00
		1116	332.50
Lockridge, Grindal & Nauen	Legal/Consulting Services	1096	21,000.00
		1117	35,282.23
Acres Management Consulting	Transmission analysis and development	1109	17,382.20
		1118	22,490.00
Ceteris, Inc.	Project development and consulting services	1115	2700.00
Miscellaneous	Office, travel and administrative expenses	1086, 1088, 1089, 1093-5, 1098-9, 1101-4, 1107-8, 1110-1, 1113, 1119, 1120-1	4229.01
State and Federal Withholding (employee income)	Tax payments	1090	8434.00
		1105	4882.00
		electronic (2/19/03)	917.00
		electronic (8/19/02)	1508.00
TOTAL			\$137,074.61

**From:** "Julie Jorgensen" <juliejorgensen@qwest.net>  
**To:** "Mike Larson" <Mike.Larson@irrrb.org>  
**Date:** 4/6/02 10:23AM  
**Subject:** closing items

Mike,

We mailed to you today a packet that contains the other closing documents for the Convertible Debenture Agreement. The packet does not contain the legal opinion, which we should get done early next week (it will come from Lockridge, Grindal, the firm that has been doing the legislative-legal work for us). You also need to receive the closing liabilities list, and I will have the accountant finalize that once we know what the closing date is (we are hoping early next week will work). Let me know if there is anything else we can do or if anything else is required.

We are working with the Chamber of Commerce to try to find a win/win with them that would make the legislation stronger for us while at the same time more attractive to the large energy users.

Thanks for your help.

Julie

# LOCKRIDGE GRINDAL NAUEN

P.L.L.P.

ATTORNEYS AT LAW

SUITE 2200

100 WASHINGTON AVENUE SOUTH

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TELEPHONE (612) 338-6900

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W. JOSEPH BRUCKNER  
PATRICIA A. BLOODGOOD\*  
CHRISTOPHER K. SANDBERG  
J. MICHAEL SCHWARTZ  
HARRY E. GALLAHER  
WILLIAM A. GENGLER  
ERIC C. TOSTRUP  
ROBERT K. SHELQUIST  
HENRI G. MINETTE  
GREGG M. FISHBEIN  
SUSAN E. ELLINGSTAD  
KAREN HANSON RIEBEL  
JAMES M. GENIA  
\*ALSO ADMITTED IN WISCONSIN

## OF COUNSEL

DANIEL A. FARBER\*\*  
ELIZABETH A. SNELSON  
KATHLEEN F. YOUNG  
MILDA K. HEDBLUM  
\*\*ADMITTED IN WASHINGTON, D.C. ONLY

CHRISTIAN M. SANDE  
HEIDI M. DREWES-SILTON  
GREGORY J. MYERS  
KATHERYN A. ANDRESEN  
MARTIN A. CARLSON  
YVONNE M. FLAHERTY  
RACHEL C. OELICH  
DARLA JO BOGGS  
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SUNNY H. KIM\*\*\*  
DAVID J. ZOLL  
MARY E. BRIEDE  
\*\*\*ADMITTED IN MASSACHUSETTS AND  
NEW YORK ONLY

## GOVERNMENT RELATIONS†

DENNIS M. MCGRANN††  
KATHLEEN K. MICHELETTI†††  
ALLYSON J. HARTLE  
REBECCA K. KLETT  
RACHEL R. ZAGRABELNY  
MARA B. HUMPHREY  
NORA C. STEWART  
ANDREW M. TANTILLO  
JENNIFER A. SWEENEY  
† NON-ATTORNEY LOBBYISTS  
†† DIRECTOR OF FEDERAL PUBLIC AFFAIRS  
††† MANAGER OF STATE GOVERNMENT RELATIONS

May 5, 2004

Tom Micheletti  
Excelsior Energy, Inc.  
294 Grove Lane East, Suite 260  
Wayzata, MN 55391

Julie Jorgensen  
Excelsior Energy, Inc.  
294 Grove Lane East, Suite 260  
Wayzata, MN 55391

Re: Retainer Letter and Fee Agreement

Dear Tom and Julie:

This letter sets forth the terms and conditions of Lockridge Grindal Nauen P.L.L.P.'s ("LGN") continued legislative and legal representation of Excelsior Energy, Inc. ("Excelsior") in connection with Excelsior's development of an IGCC coal gasification and electric power generating facility in Minnesota (the "Project"). In addition to general legal representation, LGN will provide specific legal and regulatory representation and assistance relating to (a) the development, drafting and negotiation of a Power Purchase Agreement; (b) representation before the Public Utilities Commission and other regulatory bodies; (c) environmental review, permitting, siting and routing for the Project's generation and transmission facilities; (d) drafting, negotiation, documentation and oversight of non-financial Project agreements; and (e) corporate representation relating to the development of the Project.

1. LGN will defer payment of the current balance of the 2003 governmental relations contract (i.e., \$50,000) until June 30, 2004. If payment for the 2003 contract is not received by June 30, 2004, the outstanding balance shall be subject to the multipliers and payment terms set forth in paragraph 4 which are applicable to legal fees, but in no event shall payment of the outstanding balance be made later than June 30, 2007.

2. The state and federal government relations contract for 2004 will be \$40,000. If payment for the 2004 contract is not received by June 30, 2005, the outstanding balance shall be subject to the multipliers and payment terms set forth in paragraph 4 which are applicable to legal fees, but in no event shall payment of the outstanding balance be made later than June 30, 2007.

3. The state and federal government relations contract for 2005 will be \$125,000. If payment for the 2005 contract is not received by June 30, 2006, the outstanding balance shall be subject to the multipliers and payment terms set forth in paragraph 4 which are applicable to legal fees, but in no event shall payment of the outstanding balance be made later than June 30, 2007.

4. For legal work LGN will bill you at our then-current hourly rates. For point of reference, my current hourly rate is \$250, Charles Nauen's rate is \$295 an hour, Chris Sandberg's

Tom Micheletti  
Julie Jorgensen  
May 5, 2004  
Page 2

rate is \$250 an hour and Ted Grindal's rate is \$295 an hour. We usually adjust our rates in November with the new rates taking effect in January.

Payment for all billed legal fees is due within sixty (60) days of the date of our statement, however, Excelsior may elect to delay payment of any or all of billed legal fees until certain Project milestones are reached. All legal fees which for which payment is delayed shall be subject to the multipliers set forth in this paragraph. In addition, any payments for billed legal fees which are not received within sixty (60) days of the date of the statement on which the fees first appeared will be deemed to be elected to be delayed by Excelsior and will be subject to the multipliers set forth below. Excelsior agrees that billed legal fees for which payment is delayed and which are paid at the following milestones shall be adjusted as follows:

- (a) Legal fees which are paid more than 60 days after the date of the statement but not later than the point at which \$15 million in capital or equity for the Project has been raised will be increased by 50% (i.e., multiplied by 1.5).
- (b) Legal fees which are paid after the milestone described in subparagraph 4(a) but not later than the point at which (i) the power purchase agreement for the Project has approved and (ii) at least \$30 million in capital or equity for the Project has been raised will be doubled (i.e., multiplied by 2).
- (c) Legal fees which are paid after the milestone described in subparagraph 4(b) but not later than the time of financial closing for the Project or start of construction of the Project, whichever ever comes first, will be tripled (i.e., multiplied by 3).

Excelsior agrees that in no event shall the deferred billed legal fees be paid later than the time of financial closing for the Project or start of construction of the Project, whichever ever comes first. In addition, at the point at which \$15 million in capital or equity for the Project has been raised, LGN shall have the right to require that Excelsior pay LGN up to one-half of the fees that have been deferred to that point with the balance of the fees being deferred subject to the multipliers set forth in subparagraphs 4(b) and 4(c) above.

All legal fees which were billed prior to the date of this agreement shall be considered to be fees for which payment has been delayed and shall be subject to the multipliers set forth in subparagraphs 4(a)-4(c).

5. LGN will bill Excelsior for time and out-of-pocket expenses, such as copies, telephone, fax, travel, etc., on a monthly basis. Excelsior's failure to object to a bill within 30 days of the date of the statement will be deemed to be Excelsior's acceptance of the amount billed. All expenses are payable monthly. Excelsior does not have the right to defer payment of expenses.

6. This agreement is not assignable by either party without the other party's consent; provided, however, that LGN agrees that it shall not unreasonably withhold its consent of any assignment of this Agreement so long as LGN receives satisfactory security and guarantees concerning the assignee's ability to perform and its consent to be bound by the terms of this agreement. Unless LGN has consented to the assignment of this agreement, notwithstanding anything in this agreement to the contrary, all deferred fees shall be due and payable (subject to the applicable multiplier) upon any sale, transfer or assignment of the Project or any assignment of this agreement by Excelsior.

Tom Micheletti  
Julie Jorgensen  
May 5, 2004  
Page 3

7. Excelsior's failure to pay LGN as set forth in this agreement shall be grounds for LGN withdrawing as counsel for Excelsior.

If you are in agreement with the terms of our representation, please sign the duplicate original of this agreement in the space indicated and return the duplicate original to me.

Sincerely yours,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

Harry E. Gallaher

So Agreed,

Excelsior Energy, Inc.

By Julie Jorgensen  
Its Vice-President and CFO  
Date May 8, 2004

HEG:bme

c: H. Theodore Grindal  
Charles N. Nauen

**LOCKRIDGE GRINDAL NAUEN P.L.L.P.**

Attorneys at Law  
SUITE 2200  
100 WASHINGTON AVENUE SOUTH  
MINNEAPOLIS, MINNESOTA 55401  
TELEPHONE (612) 239-6900

DATE 12/01/04

STATEMENT NO. 6322  
CLIENT NO. 04493-0002

General and Administrative Advice

Mr. Thomas Micheletti  
Excelstor Energy, Inc.  
Suite 305  
11100 Wayzata Boulevard  
Minnetonka, MN 55305

*Please detach here. Return this portion with your payment. Thank you.*

Legal services rendered from August 2003 to August 2004

\$80,927.12

Total Payments Received: 0.00

**BALANCE DUE: \$80,927.12**

260348-1



## **SAME INVOICES REIMBURSED BY IRRR AND BY DOE**

### *IRRR*

From December 2004 through February 2006, the IRR disbursed more than \$5 million to reimburse Excelsior for invoiced expenses.

See attached chart of Interest and Principal current as of 3/1/07.

### *DOE*

In June 2006, the DOE reimbursed Excelsior approximately \$6 million for invoiced expenses from December 2004 through March 31, 2006.

See attached Request for Advance or Reimbursement.

### *DUPLICATE INVOICES*

A sampling comparison of the DOE invoices with IRR invoices (using dates and invoice numbers from heavily redacted documents) showed that numerous invoices from several vendors (Browers Consulting, Faegre & Benson, Latham & Watkins, Leonard Street & Deinard, Sherner Power Consulting) were duplicated. Many of the other invoices also seemed to be have been submitted to both agencies but their invoice numbers were not compared.

**Excelsior Energy Inc. Loan #219509****Total Amount to be Funded: \$8,000,000.00**

20%/360

Dates Paid Interest To/From			# of Days	Interest	Principal Balance
12/23/2004	1/13/2005	1st Draw	21	\$2,270.92	\$194,650.26
1/13/2005	2/11/2005	2nd Draw	29	\$4,782.11	\$296,820.41
2/11/2005	2/25/2005	3rd Draw	14	\$3,542.69	\$455,489.14
2/25/2005	3/11/2005	4th Draw	14	\$4,097.01	\$526,758.51
3/11/2005	4/12/2005	5th Draw	32	\$14,866.83	\$836,259.09
4/12/2005	5/12/2005	6th Draw	30	\$20,803.20	\$1,248,192.09
5/12/2005	6/14/2005	7th Draw	33	\$30,974.38	\$1,689,511.46
6/14/2005	6/22/2005	8th Draw	8	\$10,240.72	\$2,304,161.09
6/22/2005	7/14/2005	9th Draw	22	\$29,596.32	\$2,421,516.69
7/14/2005	8/16/2005	10th Draw	33	\$47,204.48	\$2,574,789.88
8/16/2005	9/13/2005	11th Draw	28	\$54,842.61	\$3,525,596.61
9/13/2005	2/9/2006	12th Draw	149	\$323,419.67	\$3,907,083.28
2/9/2006	6/5/2006	13th Draw	116	\$324,678.07	\$5,038,108.01
6/5/2006	6/14/2006	14th Draw	9	\$25,481.03	\$5,096,206.56
6/14/2006	3/1/2007	15th Draw	260	\$758,474.17	\$5,250,975.04
Interest Due:				<u>\$1,655,274.21</u>	

**Excelsior Energy Inc. Loan #200517****Total Amount to be Funded: \$1,500,000.00**

20%/360

Dates Paid Interest To/From			# of Days	Interest	Principal Balance
5/2/2002	11/26/2002	1st Draw	208	\$28,888.89	\$250,000.00
11/26/2002	4/8/2003	2nd Draw	133	\$28,447.22	\$385,000.00
4/8/2003	7/2/2004	3rd Draw	451	\$125,277.78	\$500,000.00
7/2/2004	8/27/2004	4th Draw	56	\$27,526.84	\$884,791.33
8/27/2004	11/17/2004	5th Draw	82	\$48,536.89	\$1,065,443.85
11/17/2004	12/9/2004	6th Draw	22	\$17,032.35	\$1,393,555.97
12/9/2004	3/1/2007	Final Draw	812	\$676,666.67	\$1,500,000.00
Interest Due:				<u>\$952,376.63</u>	

**TOTAL INTEREST DUE \$2,607,650.85**

# REQUEST FOR ADVANCE OR REIMBURSEMENT

(See instructions on back)

OMB APPROVAL NO.

0348-0004

PAGE 1 OF 2 PAGES

1. TYPE OF  
PAYMENT  
REQUESTED

a. "X" one or both boxes

☐ ADVANCE ☒ REIMBURSE-  
MENT

b. "X" the applicable box

☐ FINAL ☒ PARTIAL

2. BASIS OF REQUEST

☐ CASH

☒ ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO  
WHICH THIS REPORT IS SUBMITTED

NETL

4. FEDERAL GRANT OR OTHER  
IDENTIFYING NUMBER ASSIGNED  
BY FEDERAL AGENCY

DE-FC-26-05NT42385

5. PARTIAL PAYMENT REQUEST  
NUMBER FOR THIS REQUEST

1

6. EMPLOYER IDENTIFICATION  
NUMBER

20-4688195

7. RECIPIENT'S ACCOUNT NUMBER  
OR IDENTIFYING NUMBER

NA

8. PERIOD COVERED BY THIS REQUEST

FROM (month, day, year)

12/1/04

TO (month, day, year)

3/31/06

9. RECIPIENT ORGANIZATION

Name: MEP I LLC

Number

and Street: 11100 Wayzata Blvd Suite 305

City, State

and ZIP Code: Minnetonka MN 55305

Name:

Number

and Street:

City, State

and ZIP Code:

## 11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES	(a) Definition & Developr	(b) Construction	(c) Operation	TOTAL
a. Total program outlays to date (As of date)	\$ 12,143,460.00	\$ 0.00	\$ 0.00	\$ 12,143,460.00
b. Less: Cumulative program income				0.00
c. Net program outlays (Line a minus line b)	12,143,460.00	0.00	0.00	12,143,460.00
d. Estimated net cash outlays for advance period	0.00	0.00	0.00	0.00
e. Total (Sum of lines c & d)	12,143,460.00	0.00	0.00	12,143,460.00
f. Non-Federal share of amount on line e	6,071,729.00	0.00	0.00	6,071,729.00
g. Federal share of amount on line e	6,071,729.00	0.00	0.00	6,071,729.00
h. Federal payments previously requested	0.00	0.00	0.00	0.00
i. Federal share now requested (Line g minus line h)	6,071,729.00	0.00	0.00	6,071,729.00
j. Advances required by month, when requested by Federal grantor agency for use in making prescheduled advances				
1st month				0.00
2nd month				0.00
3rd month				0.00

## 12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	\$
b. Less: Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (Line a minus line b)	\$ 0.00

AUTHORIZED FOR LOCAL REPRODUCTION

(Continued on Reverse)

STANDARD FORM 270 (Rev. 7-97)

Prescribed by OMB Circulars A-102 and A-110

## MISCLASSIFYING EMPLOYEES AS INDEPENDENT CONTRACTORS AND CONSULTANTS

It was surprising to find in the IRR files consulting agreements for nearly all of the people who had been publicized in Excelsior's press releases and on its website ([www.excelsiorenergy.com](http://www.excelsiorenergy.com)) as Vice Presidents and members of the leadership/development/management team. From the documents found, it appears that some consulting agreements may have been legitimate and others were questionable.

A 10/14/04 Excelsior press release announced that Bob Schulte, as VP of Regulatory Affairs, and Thomas Osteraas as VP and General Counsel, were joining the "existing team of professionals": Bill Ruzynski, VP, Project Development; Bob Evans, VP, Environmental; Renee Sass, VP & Chief Financial Officer; and Mike Wadley, VP, Operations and Technology.

Schulte's 9/14/04 consulting contract provided for monthly cash payments and phantom stock. It also allowed him to spend up to 20% of his time on other clients while giving Excelsior priority in time allocations. It appears that he received \$12,500/month for approximately a year. He no longer is listed on the Company's website and his status is unknown.

The only documentation found relating to Osteraas' status is a 9/1/04 memo from Julie Jorgensen headed "Terms of Employment". Although the terms are imprecise, it provides for deferral of a current salary and cash benefits under phantom stock equity units. Osteraas continues in his position as VP and General Counsel.

Ruzynski's 11/18/04 "Independent Consulting Agreement" (attached) was in the name of Ceteris, Inc. and he signed as President. It provided that he: was hired as VP-Development to fulfill specified duties, *subject to the general supervision and pursuant to the orders, advice and direction of the Company*; was to perform *such other duties as are customarily performed by one holding such a position*, and to *render such other and unrelated services and duties as may be assigned*. Section IV B. referred to "*all times during the employment relationship*", which reinforces the impression that this contract is one for employment rather than for independent contracting. The contract provides for "monthly direct compensation"; through Ceteris Ruzynski was paid \$10,000/month in 2004 and 2005. Ruzynski actually signed and certified the IRR disbursement requests of 11/1/04 and 12/22/04. Ruzynski was also named in the 10/29/04 contract with Milkovich as the one who would receive Milkovich's invoices. It appears that Ruzynski has been functioning as a full-time employee for about 3 1/2 years.

Evans' 5/17/04 "Independent Consulting Agreement" (attached) contains some of the same language as Ruzynski's, including the reference in IV B. to the "*employment relationship*". Evans' contract provides for an "in-kind contribution of services" in exchange for phantom stock and other at-risk compensation. Evans has been very visible in the region of the proposed plant site, attending various community and governmental meetings and speaking on behalf of the Company, appearing to be an employee.

The only documentation found relating to Sass' status is an ambiguous 2/15/04 letter (attached) she wrote to Julie Jorgensen, regarding "the key terms and general parameters for working with you on the project". She has signed and certified several of the IRR disbursement requests and is still listed on Excelsior's website as VP and CFO.

Mike Wadley left Excelsior in approximately June 2006 and although there was evidence that he had a contract, no copy of his contract was found.

Excelsior announced on 8/10/06 the addition of Dick Stone as a "senior management team member" as Sr. VP-Development and Engineering. No further information about his status is known.

Kathi Micheletti left the Lockridge firm and terminated her lobbying registration for its clients effective 1/31/07. She is listed as VP-Governmental Relations on Excelsior's website. No further information about her status is known.

Stephen Sherner and Bruce Browers are listed on the website as "additional senior personnel", along with the names of their consulting firms. Their consulting contracts (Sherner-6/03, Browers-7/2/03) appear to be legitimate. They apparently work out of their own offices and submit monthly bills, detailing time worked on the Project.

Excelsior announced in a 3/22/05 press release that Jim Milkovich had joined Excelsior as VP of Technical Services and Fuels. His 10/29/04 "Master Consulting Services Agreement" limited services to those requested in a written "Task Release", which would also specify the rate or compensation method, in accordance with the consultant's established terms and conditions. Milkovich reportedly left Excelsior in approximately May 2007.

## INDEPENDENT CONSULTING AGREEMENT

This Agreement (the "Agreement") entered into as of June 29, 2004, by and between Excelsior Energy Inc., a corporation organized and existing under the laws of the State of Minnesota, with its principal office located at 294 Grove Lane East, Suite 260, Wayzata, Carver County, Minnesota, referred to in this agreement as the Company, and Ceteris Inc., a corporation organized and existing under the laws of the State of Minnesota, with its principal office located at 9783 Belmont Lane, Eden Prairie, Hennepin County, Minnesota, referred to in this agreement as Consultant.

### II. RECITALS

- A. WHEREAS, Company is engaged in the business of developing independent power projects and seeks specific services related to development of competitive power projects, including the integrated gasification combined cycle power plant known as the Mesaba Energy Project (hereafter, the "Project");
- B. WHEREAS, Consultant has experience in providing the above-designated services;
- C. WHEREAS, the Company and Consultant wish to set forth in this Agreement the terms and conditions of the Consultant's retainer; and
- D. WHEREAS, the Company wishes to be assured that Consultant will be available to the Company until such time as construction of the Project is initiated.
- E. NOW, THEREFORE, the Company and Consultant, in consideration of the mutual promises, covenants, and obligations set forth herein, agree as follows:

### III. ENGAGEMENT

- A. Company engages, and hires Consultant (specifically William P. Ruzynski) as Vice President -Development effective on June 1, 2004 (the "Effective Date") to fulfill the duties generally outlined in Attachment 1 entitled "Roles, Responsibilities, & Expectations" as amended and Consultant accepts and agrees to such engagement, subject to the general supervision and pursuant to the orders, advice, and direction of Company.
- B. Consultant shall perform such other duties as are customarily performed by one holding such position in other, same, or similar businesses or enterprises as that engaged in by Company, and shall also additionally

render such other and unrelated services and duties as may be assigned to him from time to time by Company.

#### IV. BEST EFFORTS OF CONSULTANT

- A. Consultant agrees that he will at all times faithfully, industriously, and to the best of his ability, experience, and talents, perform all of the duties that may be required of and from him pursuant to the express and implicit terms of this agreement. Such duties shall be rendered at such places as Consultant determines, consistent with the interest, needs, business, or opportunities of Company.
- B. Consultant acknowledges and agrees that, at all times during the employment relationship Consultant shall act in the best interests of the Company, make full disclosure to Company of all information that pertains to Company's business and interests, and to do no intentional act which would injure Company's business, its interests, or its reputation.

#### V. TERM

The term of this agreement shall extend until such time as physical construction of the Project is initiated or termination of the engagement pursuant to the terms hereof.

#### VI. COMPENSATION OF CONSULTANT

- A. Consultant agrees to make an in-kind contribution of services hereunder in exchange for (a) phantom stock ("Phantom Stock") representing two percent of the equity of Company plus (b) stock options or phantom stock options ("Stock Options") representing two percent of the equity of the Company with a strike price equal to [REDACTED] per share, based on a total number of shares of [REDACTED]. Company shall put a formal plan (the "Plan") in place, and an agreement with Consultant, reflecting such phantom stock and options.
- B. Company agrees to a monthly direct compensation ("Draw") to Consultant of [REDACTED]. The Draw shall reduce the value of the at-risk compensation account ("At-Risk Account") dollar for dollar until such time as the milestone described in Article E is achieved. As of the date of this agreement the At-Risk Account has a value of [\$      ].
- C. In the event the milestone described in Article E is achieved prior to the balance in the At-Risk Account reaching a zero balance, the remainder can be either (i) converted to Phantom Stock, on a dollar for dollar basis using the formula described in Article A or (ii) continue to maintain the At-

Risk Account to supplement the annual salary as described Article E to the level of the Draw as described in Article B.

- D. At such time that the At-Risk Account reaches a zero balance, and the Draw is greater than the annual salary described in Article E, the Phantom Stock would be diluted on the basis of two dollars dilution for each dollar of draw greater than the annual salary described in Article E.
- E. As additional consideration for Consultant's services hereunder, Company agrees to make milestone payments to Consultant in the amount of [REDACTED] annually, such amount to begin to accrue on the date Company has raised an aggregate of \$15,000,000 in cash funding from a third party source or sources. Such payment shall be payable in monthly installments, prorated for any partial year, and in accordance with the Company's policies, procedures and practices as they may exist from time to time. Milestone payments may be subject to applicable withholdings dependant on the contractual arrangement between Company and Consultant. Consultant acknowledges that such payments are at risk until such funding is received.
- C. Consultant's participation in the Plan is subject to the applicable terms, conditions and eligibility requirements of the Plan documents, some of which are within the Plan administrator's discretion, as they may exist from time to time.
- D. At some point, Consultant may become an employee of the Company and, at such time, may begin to participate in all medical, dental and disability insurance, 401(k), pension, personal leave, car allowance and other Consultant benefit plans and programs which may be made available from time to time to employees at Consultant's level; provided, however, that Consultant's participation in benefit plans and programs is subject to the applicable terms, conditions and eligibility requirements of these plans and programs, some of which are within the plan administrator's discretion, as they may exist from time to time; provided, further, that the Company shall not make any changes in such plans or programs that would adversely affect Consultant's rights or benefits hereunder, except that such changes may be made pursuant to a program resulting in no proportionately greater reduction the rights of or benefits to Consultant as compared with any other Consultant of the Company at Consultant's level.
- E. Nothing in this Agreement shall require the Company to create continue or refrain from amending, modifying, revising or revoking any of the plans, programs or benefits set forth in this Agreement. Consultant acknowledges that the Company, in its sole discretion, may amend, modify, revise or revoke any such plans, programs or benefits. Any amendments,



modifications, revisions and revocations of these plans, programs and benefits shall apply to Consultant. Nothing in this Agreement shall afford Consultant any greater rights or benefits with regard to these plans, programs and benefits than are afforded to Consultant under their applicable terms, conditions and eligibility requirements, some of which are within the Plan Administrator's discretion, as they may exist from time to time.

- A. The Plan shall provide for accelerated vesting of the Phantom Stock and the Stock Options in the event of a sale of the Company, and for partial accelerated vesting upon a partial sale of the Company. It shall also provide that All Phantom Stock and options shall be adjusted/diluted to reflect new investments, dividends and any other action that affects the value of the common equity of Company.
- G. The Plan shall provide that the Phantom Stock and Stock Options shall have no voting rights.
- H. In the event of Consultant's death, all compensation payable hereunder shall be paid to Russell W. Ruzynski.

#### VIII. BUSINESS EXPENSES.

Executive shall be reimbursed for all reasonable and necessary expenses actually incurred by him in performing services under this Agreement in accordance with and subject to the terms and conditions of the applicable Company reimbursement policies, procedures and practices, as they may exist from time to time. Expenses covered by this provision include, but are not limited to, travel, entertainment, professional dues, subscriptions and dues, fees and expenses associated with membership in various professional, and business and civic associations of which Consultant's participation is in the Company's best interest.

#### IX. TRADE SECRETS

Consultant shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm, corporation, or other entity in any manner whatsoever any information concerning any matters affecting or relating to the business of Company, including but not limited to any of its customers, the prices it obtains or has obtained from the sale of, or at which it sells or has sold, its products, or any other information concerning the business of Company, its manner of operation, its plans, processes, or other data without regard to whether all of the above-stated matters will be deemed confidential, material, or important, Company and Consultant specifically and expressly stipulating that as between them, such matters are important, material, and

confidential and gravely affect the effective and successful conduct of the business of Company, and Company's good will. The Confidentiality Agreement between Company and Consultant shall remain in effect.

#### X. CONSULTANT'S INABILITY TO CONTRACT FOR COMPANY

In spite of anything contained in this agreement to the contrary, Consultant shall not have the right to make any contracts or commitments for or on behalf of Company without first obtaining the express written consent of Company.

#### XI. VACATION

In addition to the agreed upon Federal holidays, Consultant shall be entitled to three weeks of paid vacation each year during the term of this agreement, the time for such vacation to be determined by mutual agreement between Company and Consultant.

#### XII. INDEPENDENT CONTRACTOR STATUS

The parties acknowledge and agree that Consultant is not an employee of Company and, in the event that Consultant is terminated, Consultant's sole compensation shall be as set forth in Section XIV below. Consultant agrees not to pursue any claims that are based upon being or having been an employee of Company.

#### XIII. MODIFICATION OF AGREEMENT

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

#### XIV. TERMINATION

##### A. Termination for Cause or Termination by Consultant

If Consultant cancels the Agreement, or is terminated for Cause, Consultant shall be entitled to receive (1) within 60 days following the termination date, all accrued and unpaid Milestone Payments through the date of termination and (2) upon commencement of construction of the Project, an amount equal to the lesser of (a) a cash amount calculated based upon the number of months services were provided hereunder multiplied times [REDACTED] and (b) the value of Consultant's Vested Phantom Stock. "Vested Phantom Stock" means a percentage of the stock held by the employee, calculated by taking the total amount of the

stock and pro-rating it based on a numerator representing the number of days from when the stock was granted until the termination date, and a denominator representing the total number of days from the Effective Date of this agreement until the Financial Closing Date. If the Financial Closing Date has not been established, the parties will estimate in good faith when such date is expected to occur, but in no event will the denominator be less than 730.

"Cause" is defined as failure to perform the services as described herein, or \_\_\_\_\_.

B. Termination other than for Cause

If employee is terminated other than for Cause, employee shall be entitled to receive (1) within 60 days following the termination date, all accrued and unpaid Milestone Payments through the date of termination and (2) upon commencement of construction of the Project, an amount equal to the value of Consultant's Vested Phantom Stock.

C. Stock Options

In the event this agreement is terminated for any reason by either party, any Stock Options owned by Consultant shall be cancelled on the date of termination.

D. Sole Remedy

The amounts described above shall be Consultant's sole remedy for termination of this Agreement.

## XV. EFFECT OF PARTIAL INVALIDITY

The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

## XVI. NO WAIVER

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue

and remain in full force and effect as if no such forbearance or waiver had occurred.

#### XVII. PARAGRAPH HEADINGS

The titles to the paragraphs of this agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this agreement.

In witness of the above, each party to this agreement has caused it to be executed at 294 Grove Lane East, Suite 260, Wayzata, Hennepin County, Minnesota on the date indicated below.

Julie Jorgensen 11-18-04  
Excelsior Energy, Inc. Date

William P. Ruzynski 11-18-04  
Date  
William P. Ruzynski  
President  
Ceteris, Inc.

## INDEPENDENT CONSULTING AGREEMENT

This Agreement (the "Agreement") entered into as of May 17, 2004, by and between Excelsior Energy Inc., a corporation organized and existing under the laws of the State of Minnesota, with its principal office located at 294 Grove Lane East, Suite 260, Wayzata, Hennepin County, Minnesota, referred to in this agreement as the Company, and Robert S. Evans II, referred to in this agreement as Consultant.

### II. RECITALS

- A. WHEREAS, Company is engaged in the business of developing independent power projects and seeks specific services related to project development, including without limitation, securing licenses, permits and other approvals required to construct and operate competitive power projects, including the integrated gasification combined cycle power plant known as the Mesaba Energy Project (hereafter, the "Project");
- B. WHEREAS, Consultant has experience in providing the above-designated services;
- C. WHEREAS, the Company and Consultant wish to set forth in this Agreement the terms and conditions of the Consultant's retainer; and
- D. WHEREAS, the Company wishes to be assured that Consultant will be available to the Company until such time as construction of the Project is initiated.
- E. NOW, THEREFORE, the Company and Consultant, in consideration of the mutual promises, covenants, and obligations set forth herein, agree as follows:

### III. ENGAGEMENT

- A. Company engages, and hires Consultant as Vice President - Environmental Affairs effective on May 21, 2004 (the "Effective Date") to fulfill the duties generally outlined in Attachment 1 entitled "Roles, Responsibilities, & Expectations" as amended and Consultant accepts and agrees to such engagement, subject to the general supervision and pursuant to the orders, advice, and direction of Company.
- B. Consultant shall perform such other duties as are customarily performed by one holding such position in other, same, or similar businesses or enterprises as that engaged in by Company, and shall also additionally render such other and unrelated services and duties as may be assigned to him from time to time by Company.

#### IV. BEST EFFORTS OF CONSULTANT

- A. Consultant agrees that he will at all times faithfully, industriously, and to the best of his ability, experience, and talents, perform all of the duties that may be required of and from him pursuant to the express and implied terms of this agreement. Such duties shall be rendered at such places as Consultant determines, consistent with the interest, needs, business, or opportunities of Company.
- B. Consultant acknowledges and agrees that, at all times during the employment relationship Consultant shall act in the best interests of the Company, make full disclosure to Company of all information that pertains to Company's business and interests, and to do no intentional act which would injure Company's business, its interests, or its reputation.

#### V. TERM

The term of this agreement shall extend until such time as physical construction of the Project is initiated or termination of the engagement pursuant to the terms hereof.

#### VI. COMPENSATION OF CONSULTANT

- A. Consultant agrees to make an in-kind contribution of services hereunder in exchange for (a) phantom stock ("Phantom Stock") representing two percent of the equity of Company plus (b) stock options or phantom stock options ("Stock Options") representing [REDACTED] of the equity of the Company with a strike price equal to [REDACTED] per share, based on a total number of shares of [REDACTED]. Company shall put a formal plan (the "Plan") in place, and an agreement with Consultant, reflecting such phantom stock and options.
- B. As additional consideration for Consultant's services hereunder, Company agrees to make milestone payments to Consultant in the amount of [REDACTED] annually, such amount to begin to accrue on the date Company has raised an aggregate of \$15,000,000 in cash funding from a third party source or sources. Such payment shall be less applicable withholdings, and payable in monthly installments, prorated for any partial year, and in accordance with the Company's policies, procedures and practices as they may exist from time to time. Consultant acknowledges that such payments are at risk until such funding is received.
- C. Consultant's participation in the Plan is subject to the applicable terms, conditions and eligibility requirements of the Plan documents, some of

which are within the Plan administrator's discretion, as they may exist from time to time.

- D. At some point, Consultant may become an employee of the Company and, at such time, may begin to participate in all medical, dental and disability insurance, 401(k), pension, personal leave, car allowance and other Consultant benefit plans and programs which may be made available from time to time to employees at Consultant's level; provided, however, that Consultant's participation in benefit plans and programs is subject to the applicable terms, conditions and eligibility requirements of these plans and programs, some of which are within the plan administrator's discretion, as they may exist from time to time; provided, further, that the Company shall not make any changes in such plans or programs that would adversely affect Consultant's rights or benefits hereunder, except that such changes may be made pursuant to a program resulting in no proportionately greater reduction the rights of or benefits to Consultant as compared with any other Consultant of the Company at Consultant's level.
- E. Nothing in this Agreement shall require the Company to create, continue or refrain from amending, modifying, revising or revoking any of the plans, programs or benefits set forth in this Agreement. Consultant acknowledges that the Company, in its sole discretion, may amend, modify, revise or revoke any such plans, programs or benefits. Any amendments, modifications, revisions and revocations of these plans, programs and benefits shall apply to Consultant. Nothing in this Agreement shall afford Consultant any greater rights or benefits with regard to these plans, programs and benefits than are afforded to Consultant under their applicable terms, conditions and eligibility requirements, some of which are within the Plan Administrator's discretion, as they may exist from time to time.
- F. The Plan shall provide for accelerated vesting of the Phantom Stock and the Stock Options in the event of a sale of the Company, and for partial accelerated vesting upon a partial sale of the Company. It shall also provide that all Phantom Stock and options shall be adjusted/diluted to reflect new investments, dividends and any other action that affects the value of the common equity of Company.
- G. The Plan shall provide that the Phantom Stock and Stock Options shall have no voting rights.
- H. In the event of Consultant's death, all compensation payable hereunder shall be paid to Nancy K. Evans, Consultant's spouse.

### VIII. BUSINESS EXPENSES.

Consultant shall be reimbursed for all reasonable and necessary expenses actually incurred by him in performing services under this Agreement in accordance with and subject to the terms and conditions of the applicable Company reimbursement policies, procedures and practices, as they may exist from time to time. Expenses covered by this provision include, but are not limited to, travel, entertainment, professional dues, subscriptions and dues, fees and expenses associated with membership in various professional, and business and civic associations of which Consultant's participation is in the Company's best interest.

### IX. TRADE SECRETS

Consultant shall not at any time or in any manner, either directly or indirectly, divulge, disclose or communicate to any person, firm, corporation, or other entity in any manner whatsoever any information concerning any matters affecting or relating to the business of Company, including but not limited to any of its customers, the prices it obtains or has obtained from the sale of, or at which it sells or has sold, its products, or any other information concerning the business of Company, its manner of operation, its plans, processes, or other data without regard to whether all of the above-stated matters will be deemed confidential, material, or important, Company and Consultant specifically and expressly stipulating that as between them, such matters are important, material, and confidential and gravely affect the effective and successful conduct of the business of Company, and Company's good will. The Confidentiality Agreement between Company and Consultant shall remain in effect.

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"Cause" is defined as a material breach of the terms of this Agreement, which breach is not cured and resolved within three weeks following written notice sent by regular and certified mail by the Company.

#### B. Termination other than for Cause

If employee is terminated other than for Cause, employee shall be entitled to receive (1) within 60 days following the termination date, all accrued and unpaid Milestone Payments through the date of termination and (2) upon commencement of construction of the Project, an amount equal to the value of Consultant's Vested Phantom Stock.

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In the event this agreement is terminated for any reason by either party, any Stock Options owned by Consultant shall be cancelled on the date of termination.

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XVI. NO WAIVER

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

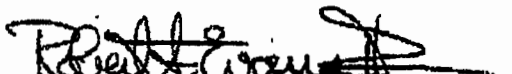
XVII. PARAGRAPH HEADINGS

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In witness of the above, each party to this agreement has caused it to be executed at 294 Grove Lane East, Suite 260, Wayzata, Hennepin County, Minnesota on the date indicated below.

  
Excelior Energy Inc.

May 17, 2004  
Date

  
Robert S. Evans II

MAY 17 2004  
Date

February 15, 2004

Julie Jorgensen  
Excelsior Energy, Inc.

Dear Julie,

I am pleased to put forward the following points, which are my understanding of the key terms and general parameters for working with you on the project. I am certainly looking forward to starting work on the project in the very near future.

The following outlines my understanding of the key tangible terms that we have discussed.

- Prior to the entrance of an equity partner in the transaction, compensation will be as follows:
  - There will be no Direct Compensation payable on an hourly or monthly basis.
  - At-Risk Compensation would be at a rate of \$200 per hour, with the total At-Risk Compensation noted on each month's invoice. Included in this note would be the monthly total and a cumulative total, to-date.
  - The At-Risk Compensation would be payable upon the sale of the project, or an option on the project to a third party in which the third party pays to you a premium and/or reimbursement for your historical costs in the transaction. In the event I was no longer working on the project at the time a partner enters the transaction, the At-Risk Compensation would still be paid. However, if I elected to quit working on the project, the At-Risk Compensation would be paid at a rate of 50%. A notice on my decision to quit working on the project would be given in writing.
  - Success Compensation would be at a rate of \$100 per hour, with the total Success Compensation noted on each month's invoice. Included in this note would be the monthly total and a cumulative total, to date.
  - The Success Compensation would be payable at financial close of the project, or upon a sale to a third party, whichever may occur first. A "sale to a third party" is defined as a sale to a third party of more than 50% of the equity in the project, at a premium, that results in the two of you no longer working on the project, in which the buyer does not affirmatively assume, to my satisfaction, the obligation to pay the Success Compensation at financial closing. In the event I was no longer working on the project at financial close (or sale to a third party), the Success Compensation. However, if I elected to quit working on the project, the Success Compensation would not be paid. A notice on my decision to quit working on the project would be given in writing.

- After the entrance of an equity partner in the transaction, compensation will be as follows:
  - Direct Compensation would be payable at a rate of [REDACTED] per hour invoiced and payable on a monthly basis.
  - Success Compensation would be at a rate of [REDACTED] per hour, with the total Success Compensation noted on each month's invoice. Included in this note would be the monthly total and a cumulative total, to date.
  - The Success Compensation would be payable at financial close of the project, or upon a sale to a third party, whichever may occur first. A "sale to a third party" is defined as a sale to a third party of more than 50% of the equity in the project, at a premium, that results in the two of you no longer working on the project, in which the buyer does not affirmatively assume, to my satisfaction, the obligation to pay the Success Compensation at financial closing.
  - In the event I was no longer working on the project at financial close (or sale to a third party), the Success Compensation would still be paid. However, if I elected to quit working on the project, the Success compensation would not be paid. A notice on my decision to quit working on the project would be given in writing.
- Relevant out-of-pocket expenses would be reimbursed at cost (e.g. itemized long distance telephone charges), and included in the most current invoice being issued (i.e. the expenses would be included with the next invoice after the charges are received).
- Targeted available hours to work on the project would be ten hours per week, or on average 40 hours per month. The intent would be to jointly work to best utilize available time and coordinate those periods when the workflow warrants additional hours be devoted to the project.

In addition, as the development of the project progresses, I would prefer to keep open an option to discuss converting the Success and/or At-Risk compensation into an equity position in the project. I would view such a conversion would be done with an appropriate multiplier applied to the outstanding At-Risk and Success Compensation due to the inherent Risk of the cash flow from an equity position.

In summary and as we discussed, I feel it is best that going forward if the terms are viewed as out of balance in any way, we would endeavor to reach a mutually acceptable resolution.

Sincerely,



Renee Sass