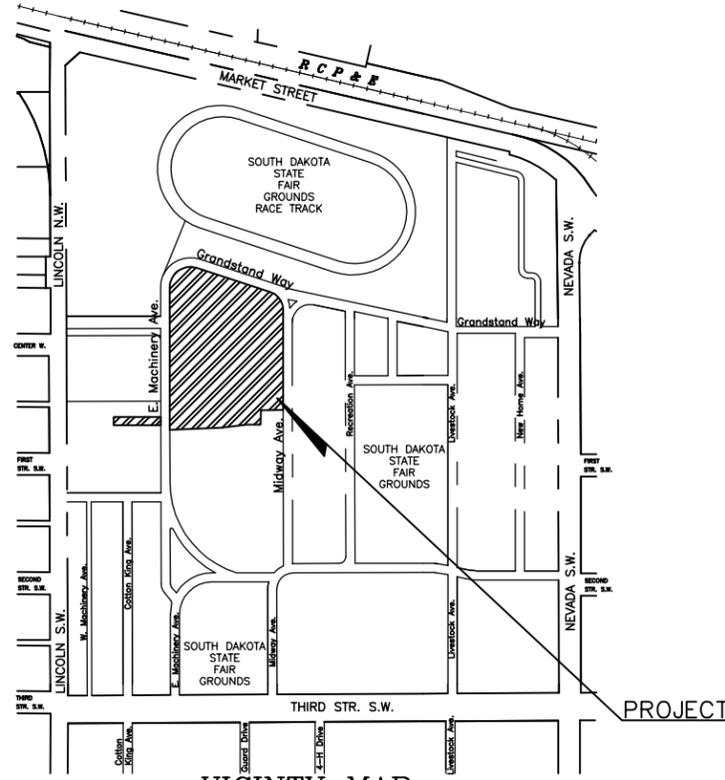


PROJECT

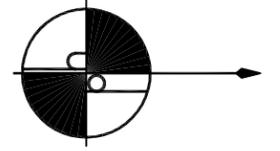


VICINITY MAP

**INDEX OF SHEETS**

Sheet No. 1.	Title Sheet
Sheet No. 2.	General Notes & Quantities
Sheet No. 3.	Construction Plan
Sheet No. 4.	Detail Sheet
Sheet No. 5.	Low Flow Silt Fence Details

PIERCE & HARRIS ENGINEERING  
 SUITE 15 MASONIC BLDG.  
 HURON, SOUTH DAKOTA



CONSTRUCTION PLANS FOR

# ASPHALT CONCRETE RESURFACING SOUTH DAKOTA STATE FAIRGROUNDS FOR GRANDSTAND PARKING AND CARNIVAL MIDWAY HURON, SOUTH DAKOTA OSE# M2316-03X/SWMR

MAY 2016

This Document Originally  
 Issued and Signed By:  
**Randall V. Hoscheld, PE**  
 License No. 3506  
 06/03/2016

PROJECT  
 ASPHALT CONCRETE RESURFACING  
 SOUTH DAKOTA STATE FAIRGROUNDS  
 FOR GRANDSTAND PARKING AND  
 CARNIVAL MIDWAY  
 OSE# M216-03X/SWMR  
 HURON, SOUTH DAKOTA  
 MAY 2016

# ESTIMATE OF QUANTITIES

## For Information Only

ITEM	QUANTITY	UNIT	REMARKS	ITEM	QUANTITY	UNIT	REMARKS
<u>ALERNATE NO. 1</u>				<u>BASE BID</u>			
Unclassified Excavation	92	CuYd		Asphalt Concrete Class D W/20% RAP	1,794.2	Ton	
Topsoil Removed	52	CuYd		Asphalt Cement Binder PG 58-28	107.65	Ton	
Topsoil Placed	52	CuYd		Bituminous Tack Coat	40.0	Ton	
Granular Base	300	Ton		Milling of Asphalt Surface	4,436	SqFt	
Low Flow Silt Fence	45	LinFt		Asphalt Concrete Class D W/20% RAP - Leveling	50.0	Ton	
Type D Permanent Seed Mixture Fertilizer	21	Lb		Asphalt Cement Binder PG 58-28 - Leveling	3.0	Ton	
Asphalt Concrete Class D W/20% RAP	95.0	Ton		<u>ALTERNATE NO. 2</u>			
Asphalt Cement Binder PG 58-28	5.7	Ton		Asphalt Concrete Class D W/20% RAP	223.7	Ton	
Bituminous Tack Coat	1.1	Ton		Asphalt Cement Binder PG 58-28	13.4	Ton	
				Bituminous Prime Coat MC-70	5.0	Ton	
				Milling of Asphalt Surface	224	SqFt	
				Asphalt Concrete Class D W/20% RAP - Leveling	50.0	Ton	
				Asphalt Cement Binder PG 58-28 - Leveling	3.0	Ton	

**SPECIFICATIONS:**

Standard Specifications for Roads and Bridges, 2015 Edition and/or Special Provisions as included in the Proposal.

**BASE COURSE:**

Base Course shall be furnished by the Contractor.

**WATER FOR COMPACTION:**

Cost of water for compaction of the granular material shall be in the Contract Lump Sum price.

**EXCAVATION OF UNSTABLE MATERIAL:**

Included in the Estimate of Quantities are 25 cubic yards Unclassified Excavation-Digouts for the project for necessary removal of unstable material.

**ASPHALT CONCRETE - CLASS D with 20% Recyled Asphalt Pavement (RAP):**

Aggregate for Asphalt Concrete Class D shall conform to the gradation requirements for Class D, Type 2.

Aggregate shall be furnished by the Contractor.

The Engineer may require that an acceptable silicone be added to asphalt cement in storage at the rate of approximately one (1) fluid ounce per five thousand (5,000) gallons of asphalt.

The cost of the silicone additive shall be considered incidental to other items, therefore, separate measurement and payment will not be made.

The Asphalt Concrete Class D shall be compacted by the Specified Density Method. Compaction shall be to a minimum of 95% of the Maximum Density.

**LOW FLOW SILT FENCE:**

The Low flow silt fence fabric provide shall be from the approved product list. The approved product list for low flow silt fence may be viewed at the following internet site:

<http://sddot.com/business/certification/products/Default.aspx>

Low flow silt fence shall be placed at the locations noted on sheet 3 of 5 and at locations that will minimize siltation of adjacent to drainage areas as determined by the Engineer during construction. Refer to sheet 5 of 5 for details.

An additional 25 feet of Low flow Silt Fence has been added to the Estimate of Quantities for temporary sediment control.

**REMOVE SILT FENCE:**

Silt fence shall be removed by the S.D. State Fair when vegetation is established. Some or all of the silt fence may be left on the project until vegetation is established. Quantities for all silt fence left in place will become property and responsibility of the School.

**SALVAGING, STOCKPILING AND PLACING TOPSOIL**

Existing vegetation shall be salvaged, incorporated and placed with the topsoil as far as practicable. The Contractor shall stockpile topsoil on the fairgrounds as directed.

The areas to be covered with topsoil to a depth of 3± inches comprise all newly graded areas within the work limits. All areas disturbed will be topsoiled.

**TYPE D PERMANENT SEEDING:**

The areas to be seeded comprise all disturbed areas within the project limits.

Permanent Seed Mixture shall consist of the following:

Grass Species	Variety	Pure Live Seed (Pounds/1000 SqFt)
Kentucky Bluegrass	Avalanche, Appalachian, Wildhorse, Blue Bonnet	1.4
Perennial Ryegrass	Turf Type Varieties	1.4
Creeping Red Fescue	Epic, Boreal	1.4
Chewings Fescue	Ambrose, K2, VNS, Zodiac	1.4
Alkali Grass	Fults, Fults II, Quill, Salty	1.4
Total:		7

**FERTILIZING:**

A commercial fertilizer with a minimum guaranteed analysis of 13-13-13, 18-46-0, 11-52-0, or an approved alternate fertilizer sold for use a lawn starter fertilizer shall be applied to all areas designated for permanent seeding. Application rate of fertilizer shall be 100 hundred pounds per acre.

**DRILLS:**

In addition to the drills specified in Section 730 of the Standard Specifications, other types of drills including no-till drills will be allowed as long as they have baffles, partitions, agitators, which keep the seed distributed throughout the seed box and the seed is planted at a depth of 1/4" to 1/2".

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**License No. 3506**  
**06/03/2016**

**PIERCE & HARRIS ENGINEERING**  
SUITE 15 MASONIC BLDG.

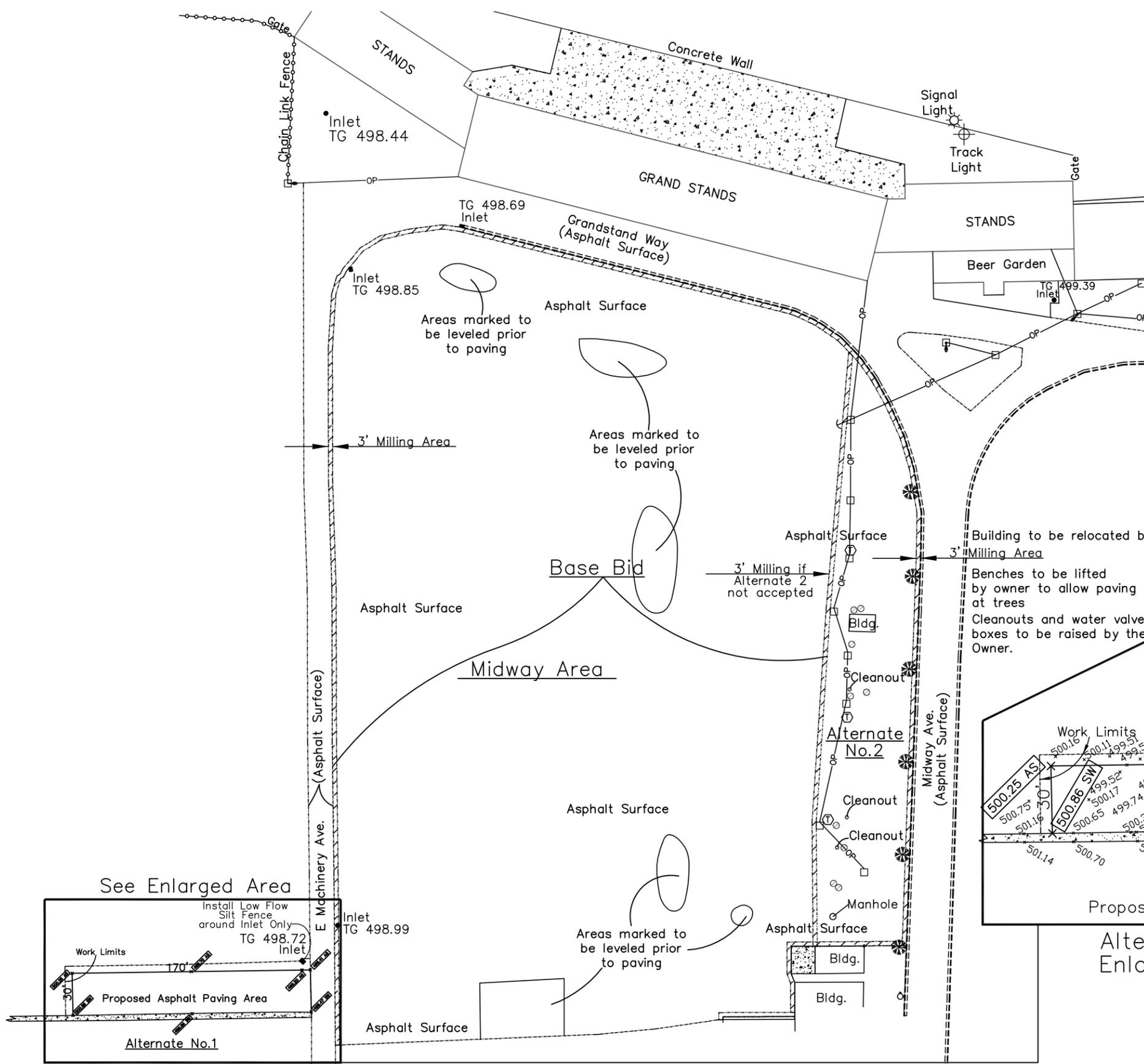
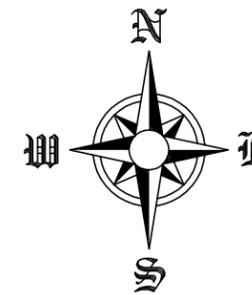
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GENERAL NOTES AND QUANTITIES FOR:  
ASPHALT CONCRETE PAVEMENT FOR  
GRANDSTAND PARKING AND CARNIVAL MIDAWAY

S.D. STATE FAIRGROUNDS  
OSE# M2316-03X/SWMM  
HURON, SOUTH DAKOTA

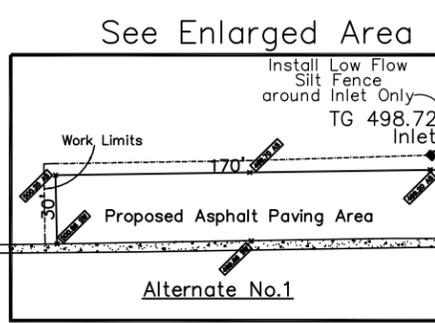
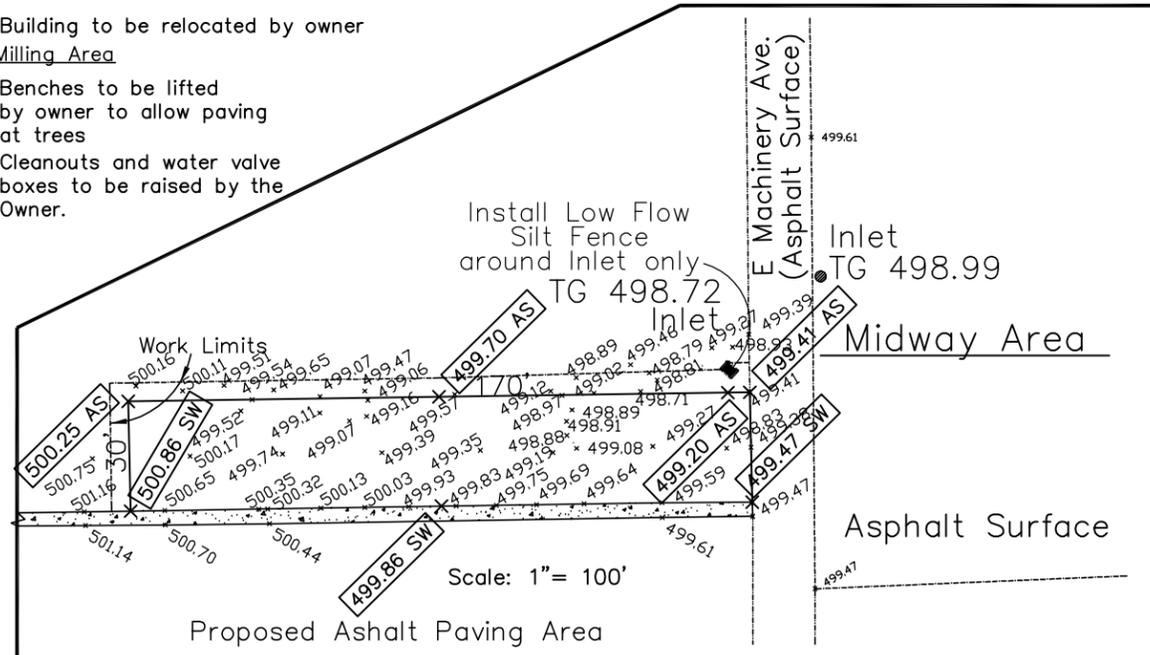
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Scale: NA    Date: May 2016    Dwn By: DAG/CAD    Sheet 2 of 5



**LEGEND**

	Water Shutoff Valve
	Light & Pole
	Buried or Overhead Power Line
	Guy Wire
	Buried Telephone & Cable Box
	Cable Box
	Concrete Surface
	Concrete Curb & Gutter
	Sanitary Sewer
	Storm Sewer Inlets
	Fire Hydrant
	Tree 4" to 12±" Dia.
	Low Fence Silt Fence
	Chain Link Fence
	Existing Elevation
	Proposed Finish Asphalt Elevation



Alternate No. 1  
Enlarged

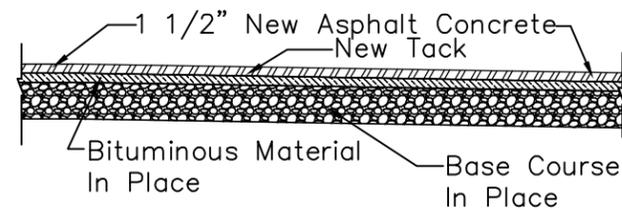
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06/03/2016**

**PIERCE & HARRIS ENGINEERING**  
SUITE 15 MASONIC BLDG.

REPLACEMENT OR RESURFACE OF ASPHALT  
CONCRETE PAVEMENT FOR  
GRANDSTAND PARKING AND CARNIVAL MIDWAY  
S.D. STATE FAIRGROUNDS  
OSE# M2316-03X/SWMM  
HURON, SOUTH DAKOTA

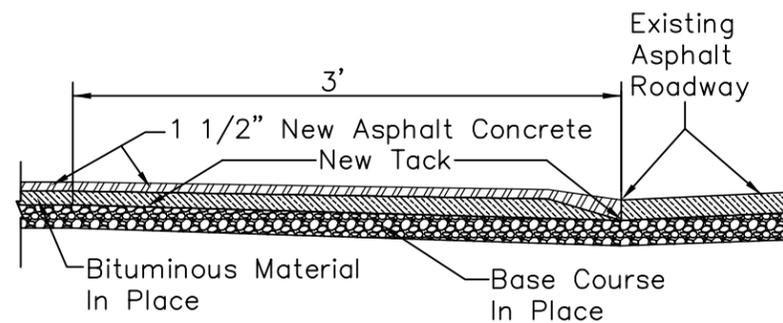
SD Fairgrounds  
Asphalt  
Construction A

Scale: 1"=160' Date: May 2016 Dwn By: DAG/CAD Sheet 3 of 5

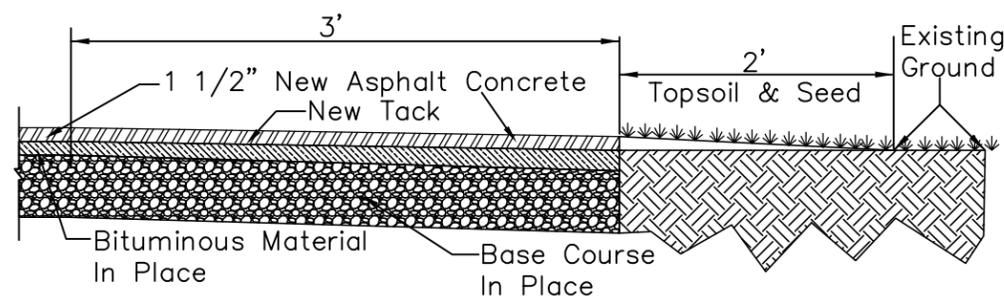


TYPICAL SECTION FOR ASPHALT CONCRETE SURFACING (Grandstand Parking & Carnival Midway)

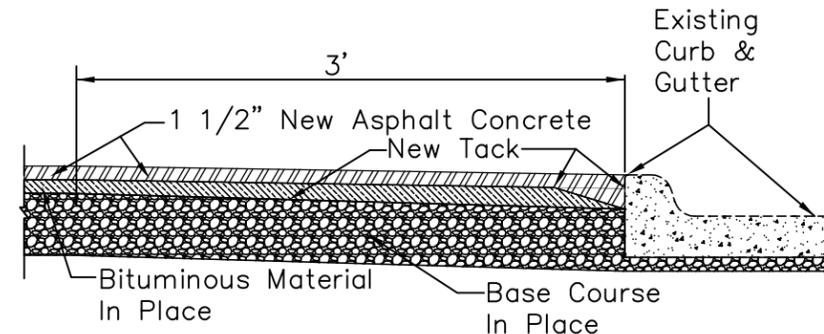
- Note:
1. Prior to applying tack coat all areas to be paved shall be thoroughly cleaned by sweeping.
  2. All new asphalt shall be SDDOT Class D Type II with 20% Recycled Asphalt Pavement (RAP).
  3. Asphalt Binder PG 58-28.



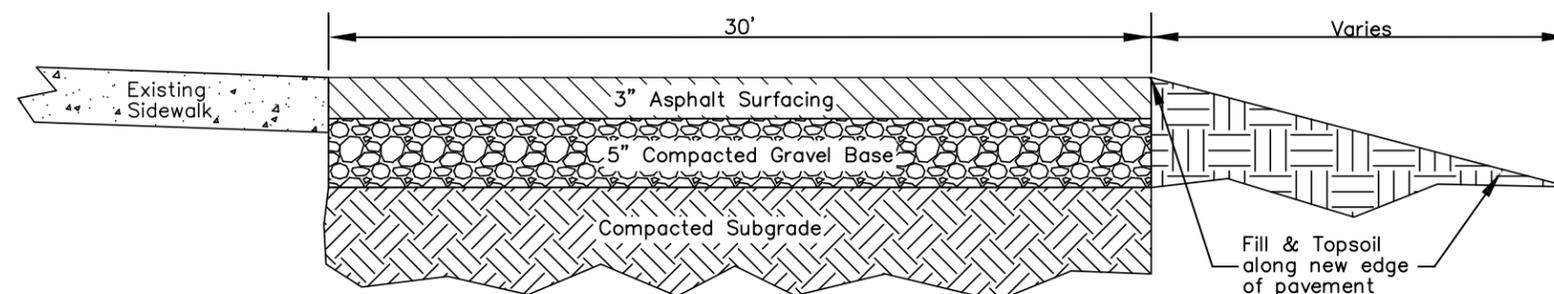
TYPICAL SECTION FOR MILLING ALONG EDGES OF EXISTING ASPHALT SURFACING (Grandstand Parking & Carnival Midway)



TYPICAL SECTION ALONG EXISTING GROUND LINE (Grandstand Parking & Carnival Midway)



TYPICAL SECTION FOR MILLING ALONG EXISTING CONCRETE CURB & GUTTER (Grandstand Parking & Carnival Midway)

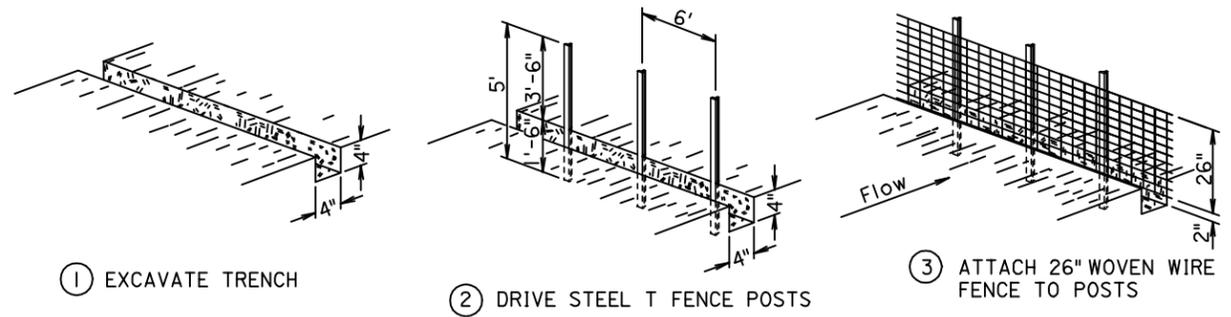


TYPICAL SECTION FOR ASPHALT CONCRETE SURFACING (ALTERNATE NO. 1)

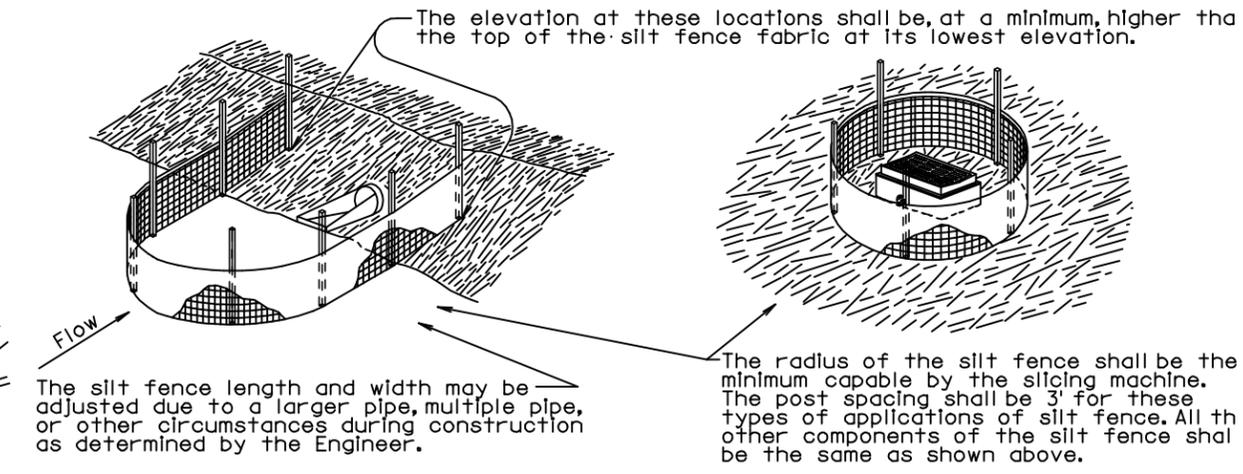
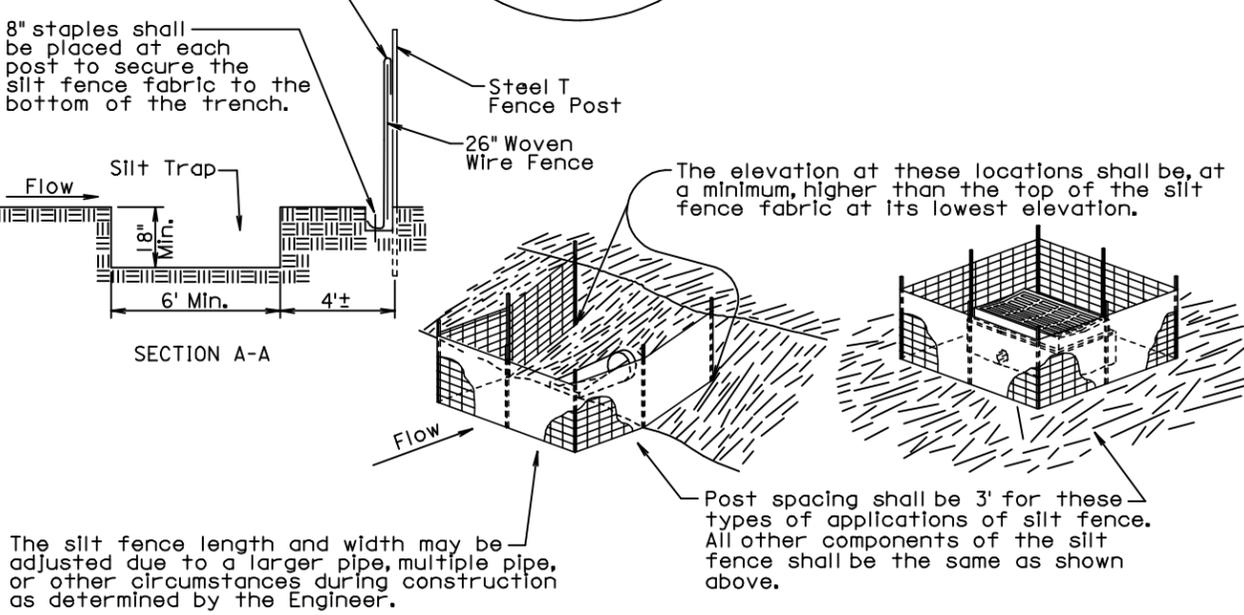
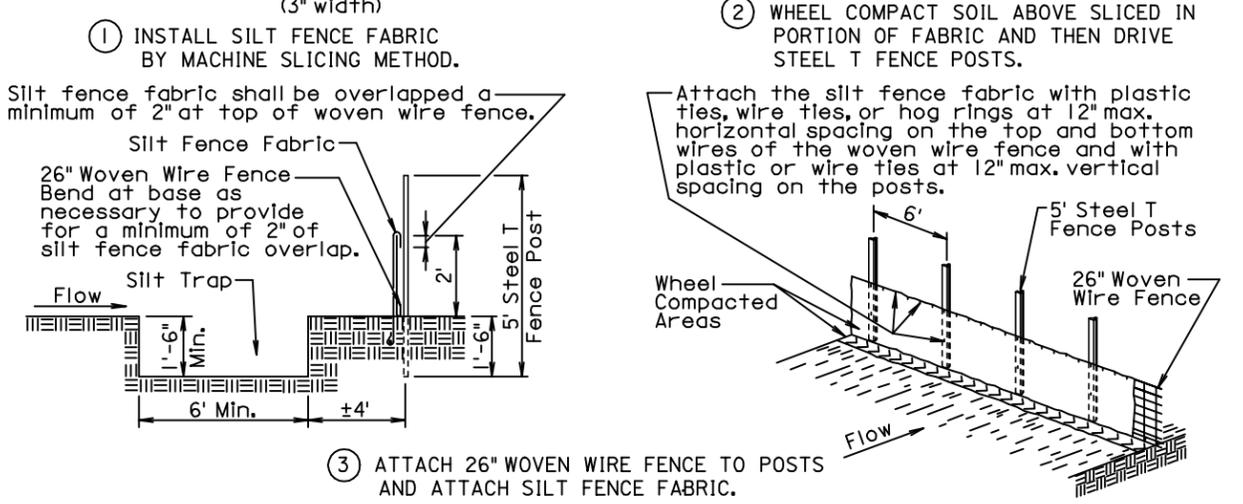
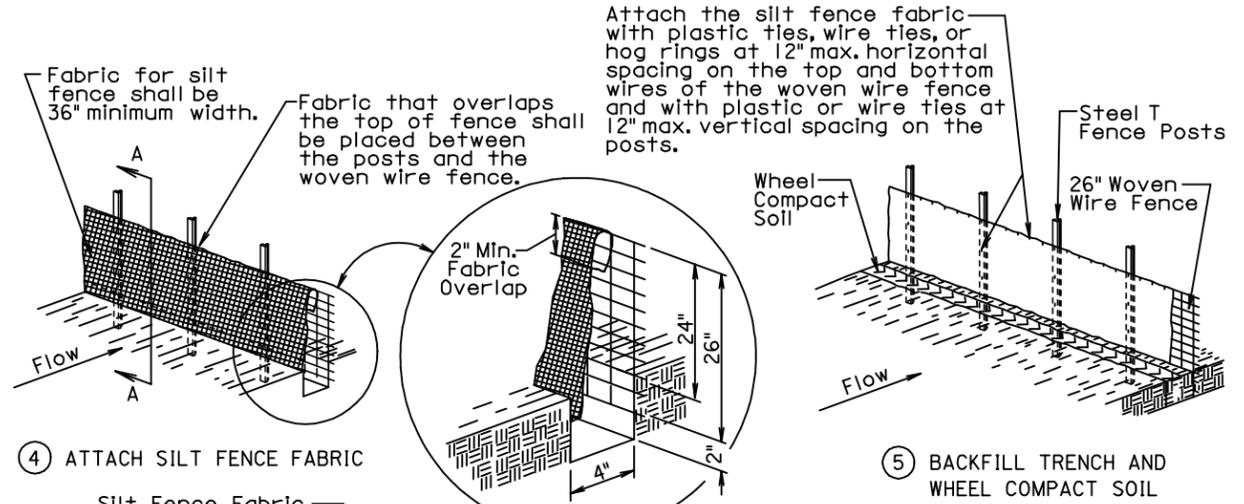
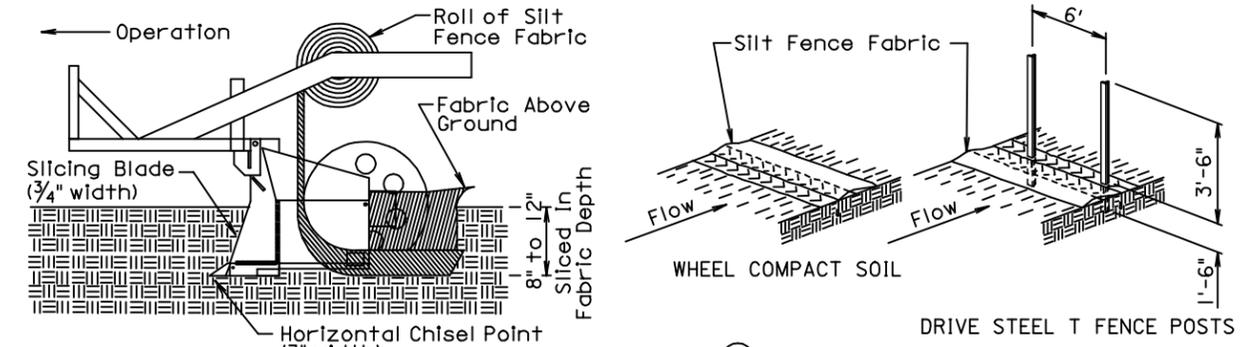
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	<b>PIERCE &amp; HARRIS ENGINEERING</b> SUITE 15 MASONIC BLDG.	
	DETAILS FOR: ASPHALT CONCRETE PAVEMENT FOR GRANDSTAND PARKING AND CARNIVAL MIDWAY S.D. STATE FAIRGROUNDS OSE# M2316-03X/SWMR HURON, SOUTH DAKOTA	
SD Fairgrounds Asphalt Details A	Scale: NA	Date: May 2016
	Dwn By: DAG/CAD	Sheet 4 of 5

MANUAL LOW FLOW SILT FENCE INSTALLATION



MACHINE SLICED LOW FLOW SILT FENCE INSTALLATION



The silt fence length and width may be adjusted due to a larger pipe, multiple pipe, or other circumstances during construction as determined by the Engineer.

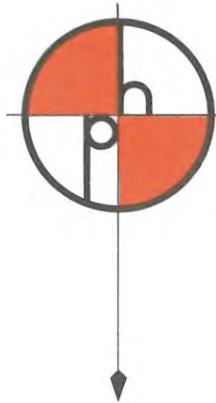
GENERAL NOTES:

A silt trap shall be provided when specified by a plan note. All costs for constructing the silt trap shall be incidental to the contract unit price per cubic yard for "Silt Trap".  
 If a trench can not be dug or the silt fence fabric can not be sliced in due to the type of earthen material (such as rock), then a row of 30 to 40 pound sandbags butted end to end shall be provided on top of the extra length of silt underflow.

LOW FLOW SILT FENCE

**PIERCE & HARRIS ENGINEERING**  
 SUITE 15 MASONIC BLDG.  
 LOW FLOW SILT FENCE DETAILS FOR:  
 ASPHALT CONCRETE PAVEMENT FOR  
 GRANDSTAND PARKING AND CARNIVAL MIDWAY  
 S.D. STATE FAIRGROUNDS  
 OSE# M2316-03X/SWMR  
 HURON, SOUTH DAKOTA

SD Fairgrounds Asphalt Details A  
 Scale: NA Date: May 2016 Dwn By: DAG/CAD Sheet 5 of 5



**PIERCE & HARRIS**

CONSULTING ENGINEERS

**REPLACE/RESURFACE ASPHALT PAVEMENTS  
GRANDSTAND PARKING AND CARNIVAL MIDWAY  
SD STATE FAIR, HURON, SOUTH DAKOTA**

**OSE# M2316-03X/SWMR**

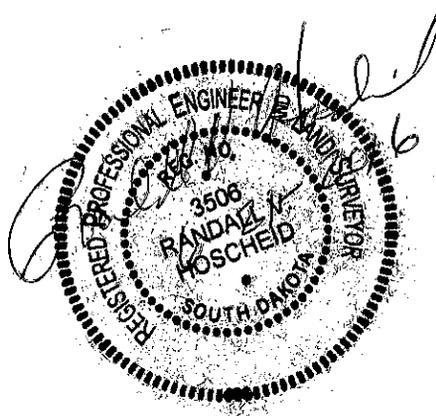
**MAY, 2016**

SUITE 15 MASONIC BUILDING  
TELEPHONE (605) 352-5382  
POST OFFICE BOX 1384  
HURON, SOUTH DAKOTA 57350



**REPLACE/RESURFACE ASPHALT PAVEMENTS  
GRANDSTAND PARKING AND CARNIVAL MIDWAY  
SD STATE FAIR, HURON, SOUTH DAKOTA  
OSE# M2316-03X/SWMR**

**MAY, 2016**



**PIERCE AND HARRIS ENGINEERING  
P.O. BOX 1384  
HURON, SD 57350**

Should the Contractor fail to substantially complete the work within the time set forth herein, or within such extra time as may have been allowed by increases in the contract, or by formally approved extensions granted by the Owner, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner \$140.00 per calendar day as liquidated damages for each calendar day of delay until the work is substantially complete.

**INDEX**  
**FOR**  
**STATE SPECIFICATION**  
**HEAD SECTIONS, GENERAL CONDITIONS,**  
**SPECIAL CONDITIONS, TECHNICAL SPECIFICATIONS**  
**AND PLANS**

- 1 .....INDEX
- 2 .....INVITATION TO BID
- 3 .....BIDDER'S CHECKLIST
- 4 .....ASBESTOS CONTAINING MATERIALS STATEMENT
- 5 .....INSTRUCTIONS TO BIDDERS
  - A .....BID FORM AND/OR EXPLANATION OF ALTERNATES
  - A-1 .....MODIFICATION TO BID FORM
  - B .....FORMAT FOR SEALED ENVELOPE
  - C .....BID BOND
  - D .....PERFORMANCE & PAYMENT BOND WITH ACKNOWLEDGMENT OF SURETY
  - E .....NON-RESIDENT BIDDER AFFIDAVIT
  - F .....CONTRACTOR'S STATEMENT OF SKILLS & CAPABILITIES
  - G .....RESIDENT SUBCONTRACTOR CERTIFICATION
- 6 .....AGREEMENT FOR CONSTRUCTION
- 7 .....GENERAL CONDITIONS AND INDEX
- 8 .....SPECIAL CONDITIONS AND INDEX
- 9 .....TECHNICAL SPECIFICATIONS AND INDEX
- 10 .....PLAN INDEX

# **INVITATION TO BID**

## Invitation to Bid

Sealed COMBINED bids will be received by the State Engineer on behalf of the South Dakota Bureau of Administration at the Office of the State Engineer, Office of the State Engineer - 523 E. Capitol Ave. Pierre, SD 57501 until 3:00 PM CT on July 21<sup>st</sup>, 2016 for Asphalt Resurfacing/Replacement at the grandstand parking lot and carnival midway on the SD State Fairgrounds in Huron, SD - OSE# M2316--03X.

Bidders please note: There is no pre-bid meeting scheduled for this project.

Copies of the Plans and Specifications, as well as general project info, may be obtained by bidders at the office of Pierce & Harris Consulting Engineers - PO Box 1384, Huron, SD 57350 - (605) 352-5382. Copies are also on file for viewing purposes at the Office of the State Engineer. Anyone requesting, reviewing, or copying Plans and Specifications for this project (such individual is hereinafter referred to as "bidder") agrees that they are doing so for the sole purpose of submitting a bid on the project. In consideration of the State of South Dakota providing such Plans and Specifications for the purpose of preparing a bid, Bidder further agrees:

- A. The Plans and Specifications are the sole property of the State;
- B. Any copies of the Plans and Specifications obtained directly from the State will be returned to the office of Pierce & Harris immediately after the State provides notice that bidder will not be awarded a contract, or thirty (30) days after the bid opening for the project, whichever occurs first;
- C. Any copies of the Plans and Specifications made by the bidder will be destroyed immediately after the State provides notice that bidder will not be awarded a contract, or thirty (30) days after the bid opening for the project, whichever occurs first;
- D. If bidder does not submit a bid, bidder will fulfill the requirements of B and C above on or before the date of the bid opening;
- E. The Plans and Specifications are to be used only with respect to this project and are not to be used for any other project or purposes other than preparing a bid for this project;
- F. The Plans and Specifications will not be disseminated to any person or entity for purposes other than obtaining pricing information without the express written approval of the state;
- G. All information contained in the Plans and Specifications is confidential; and
- H. Should the bidder disseminate the Plans and Specifications to an individual or entity for purposes of obtaining pricing information, the bidder will require that individual or entity to adhere to the terms set forth herein. The bidder, however, assumes no liability for the misuse of the Plans and Specifications by such third party or such third party's failure to comply with the provisions contained herein.
- I. Should bidder be awarded a contract for construction of the project, bidder does not need to return or destroy Plans and Specifications until after completion of the project.

Each bid in excess of \$50,000.00 must be accompanied by a certified check, cashier's check or draft in the amount of 5% of the base bid and all add alternates and drawn on a State or National Bank or a 10% bid bond issued by a surety authorized to do business in the State of South Dakota and made payable to the Bureau of Administration. The BOA reserves the right to reject any or all bids and to waive any irregularities therein.



KRISTI HONEYWELL, P.E.  
State Engineer  
Office of the State Engineer

Published twice at the total approximate cost of \_\_\_\_\_.

## BIDDER'S CHECKLIST

The following items need to be submitted along with your bid. All bids and any modifications to bids must be in the hands of the State Engineer or the State Engineer's representative on or before the time set for opening bids in the Invitation for Bids.

- All blanks on the Bid Form are filled in.
- Receipt of all addenda is noted on the Bid Form.
- Bid Form is signed by an officer of the corporation or, if not a corporation, a proprietor or partner.
- For bids of \$50,000.00 or higher, a bid bond or security is submitted with the bid.
- If a foreign contractor, a fully executed "Non-Resident Bidder Affidavit" is submitted with the bid.
- The bid, bid bond or security, and "Non-Resident Bidder Affidavit" are placed in a sealed envelope labeled in accordance with Paragraph 2 of the "Instructions to Bidders."

# **ASBESTOS STATEMENT**

#### ASBESTOS CONTAINING MATERIALS CAUTION:

It is brought to the contractor's attention that asbestos containing materials (greater than 1%) may be present outside the project requirements yet within the building or area. The contractor shall take the necessary precautions so as not to disturb this material. If asbestos containing materials are disturbed, the contractor shall follow and comply with the state rules promulgated under SDCL 34-44 pertaining to asbestos, and 29 CFR 1926.58, 40 CFR Part 61, 40 CFR Part 763 as in effect and the United States Environmental Protection Agency publication entitled "Guidance for Controlling Asbestos Containing Materials in Buildings" (EPA 560/5-85-024, June 1985).

#### ASBESTOS CONTAINING MATERIALS STATEMENT:

In accordance with the provisions of SDCL 34-44-8, all bidders and contractors are hereby notified that to the best knowledge of the owner or those representing him in any capacity, this project **does not** involve asbestos containing materials (greater than 1%). Bidders are further instructed that no asbestos containing materials are to be installed in this project.

The contractor is cautioned that hidden materials unknown to the owner and inaccessible for testing may be found during the demolition work of this project which may be asbestos containing materials. Proper procedures shall be followed upon discovery of these materials. The owner or those representing the owner in any capacity shall not be held responsible or liable for any injury or cost to any person resulting from handling of or proximity to such materials.

#### ASBESTOS LIABILITY STATEMENT

In accordance with amended SDCL 34-44, neither the owner, employees or agents of the owner, nor any other person may have any claim, right or action against the prime contractor for any asbestos related injury or damage arising from the activities of a certified asbestos abatement subcontractor. Unless exempt under applicable state and federal law, no asbestos abatement work may be performed except by a certified asbestos contractor. A certified asbestos abatement subcontractor shall hold the owner and general contractor harmless from any liability arising from such subcontractor's activities on the project. A certified asbestos abatement contractor shall cause the owner and, if acting as a subcontractor, the general contractor to be named as additional insureds and provide sufficient proof of insurance for purposes of this section.

# **INSTRUCTIONS TO BIDDERS**

## **Instructions to Bidders**

### **1. Examination of Plans, Specifications and Site.**

Bidders should carefully examine the site of the proposed work, subsurface conditions, the Plans and Specifications, and the bid and contract documents governing the project. The submission of bids is conclusive evidence that the bidder has investigated and is satisfied as to the conditions to be encountered; the character, quality, and scope of the proposed work; the quality and quantity of the materials to be furnished; and the requirements of the bid, the Plans and Specifications, and the other Contract Documents.

### **2. Submission of Bids.**

Each bid must:

- a. Be submitted on the prescribed form (Exhibit "A"); all blank spaces for bid prices must be filled in, in ink or typewritten, in both words and figures;
- b. Include any addenda issued during the time of advertising for bids the same as though it had been included in the original Plans and Specifications; and
- c. Be submitted in a sealed opaque envelope bearing on the outside the name of the bidder, his/her address, and the name of the project for which the bid is submitted. See Exhibit "B" attached hereto for Sample Format for envelope. If forwarded by mail, Federal Express, or other commercial courier, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified on the bid form.

All bids and any modifications to bids must be in the hands of the State Engineer or the State Engineer's representative on or before the time set for opening bids in the Invitation for Bids. Bids that are not properly marked may be disregarded. Bids will not be received after the time for bid opening.

### **3. Modification of Bids.**

- a. Bids may be modified by mail, email, or facsimile notice received at the place designated in the Invitation to Bid, not later than the time set for the opening of bids. A modification shall not reveal the bid price, but shall provide the addition or subtraction or the modification so that the final prices or terms will not be known to the public corporation until the sealed bid is opened (see Exhibit "A-1", Modification To Bid Form). A modification may not be withdrawn after the time set for the opening of bids. No bid made shall be changed or altered by telephone. No oral changes, alterations or conditions will be accepted under any circumstance.
- b. A facsimile modification must be submitted on Exhibit "A-1", Modification To Bid Form. Bidders submitting a facsimile (FAX) modification need to keep in mind that the Office of State Engineer has only one FAX machine available to receive facsimile modifications. OSE cannot and does not guarantee that this one FAX machine will be available during the last few minutes before bid opening. It is common for multiple bidders to try to FAX last minute modifications at the same time, tying up the machine. Bidders assume the risk that OSE will not receive last minute FAX modifications before the time set for the opening of bids. Pursuant to the requirements of SDCL

§5-18A-6(6), OSE will not accept any FAX modification received in its offices after the time set for the opening of bids.

- c. An email modification must be submitted on Exhibit "A-1", Modification To Bid Form to the email address [OSE.BIDMOD@state.sd.us](mailto:OSE.BIDMOD@state.sd.us) . Pursuant to the requirements of SDCL §5-18A-6(6), OSE will not accept any email modification received in its offices after the time set for the opening of bids.

#### **4. Contractor's Qualification Statement.**

For bids of \$100,000.00 or more, the low bidder, upon request, must submit to the Office of the State Engineer, within 48 hours of said request, Contractor's Statement of Skills and Capabilities (Exhibit "F") with their bids. The Contractor's Qualification Statement (AIA Document A305) or the AGC's Contractor Qualification Statement may be used provided it includes all the information required by the OSE document, minus the financial statement.

#### **5. Bid Security.**

Each bid over \$50,000.00 must be accompanied by a bid security as follows:

- a. Certified Check, Cashier's Check or Draft. A certified check, cashier's check or draft for five percent (5%) of the amount of the bid, including all add alternates, such check to be certified or issued by either a State or National Bank and payable to said public corporation or officer.
- b. Bid Bond. In lieu of a certified check as a bid guarantee, a bid bond of ten percent (10%) of the total amount of the bid, including all add alternates, may be furnished by the Contractor. See Exhibit "C" for Bid Bond form. Such bond to be issued by a surety authorized to do business in the State of South Dakota. Such bond shall be payable to said public corporation or officer as guaranty that such bidder will enter into a contract with said public corporation, its Board or officers thereof, in accordance with the terms of such letting and bid in case such bidder be awarded the contract.

No bidder shall be required to leave his/her certified check or other guaranty or bid bond posted for a longer period than thirty (30) days if the bid is not accepted. The certified check or other guaranty of the successful bidder shall be returned to him forthwith upon the execution of the contract and surety herein provided for.

#### **6. Withdrawal of Bids.**

Any bid may be withdrawn by letter, email, facsimile, or in person before the time specified in the advertisement therefor. Withdrawal of a bid does not prejudice a bidder's right to submit a new bid within the time designated for the submission of bids. No bids may be withdrawn after the time designated in the Invitation to Bid for the opening of bids. The email address for withdrawing a bid is [OSE.BIDMOD@state.sd.us](mailto:OSE.BIDMOD@state.sd.us) .

#### **7. Request for Interpretation.**

Any person who plans to bid on the project may submit to the Owner a written request for an interpretation of any part of the Plans and Specifications or Contract Documents. Requests for interpretations shall be made not less than ten (10) days prior to the opening of bids. Any interpretation

will be in writing and furnished to each person receiving Plans and Specifications for bidding. The Owner will not be responsible for any other explanation or interpretation.

**8. Or Equal Clause.**

Whenever a material, article, or piece of equipment is identified on the Plans or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and any materials, article, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the requirements of Article 6.3.4 of the General Conditions are met and the material, article, or equipment so proposed is, in the opinion of the Architect and State Engineer, of equal substance and functions.

**9. Preference for South Dakota Products, Labor and Materials.**

By virtue of statutory authority in SDCL § 5-18A-6(10) et seq. preference will be given to South Dakota products, labor and materials as provided by law.

**10. Opening of Bids.**

Bids will be received until the time for opening designated in the Invitation to Bid. All bids received within the designated time will be opened and read aloud at the time and place designated in the Invitation to Bid. Bidders and their authorized agents are invited to attend.

**11. Relief from Mistake in Bid.**

A bidder claiming a mistake in a bid must give the State written notice of the alleged mistake within five calendar days after the bids are opened, specifying in detail how the mistake occurred. Relief will only be granted for clerical or mathematical mistakes which can be documented to the satisfaction of the State Engineer.

**12. Rejection of Bids.**

Bids may be rejected if they show any alteration of form, additions not called for, conditional bids, incomplete bids, unexplained erasures, or irregularities of any kind. The State may waive any informality in the bids received. When bids are signed by an agent other than an authorized corporate officer or member of a partnership, a power of attorney must be filed with the bid. Otherwise, the bid will be rejected as irregular and unauthorized. If there is reason to believe that collusion among the bidders exists, any or all bids may be rejected. The State reserves the right to reject all bids if in the judgment of the State Engineer it is in the best interest of the State.

**13. Award of Contract.**

If the contract is awarded, it will be awarded to the responsible bidder submitting the lowest bid, subject to paragraph 17 below, which complies with the Invitation to Bid and with these instructions. The successful bidder will be notified within thirty (30) calendar days of the date bids are opened.. Subsequent to notice of award, the successful bidder will be presented with a contract agreement. The

contract will require the completion of work according to the Plans and Specifications and the Contract Documents. Conditional bids will not be accepted.

**14. Responsibility.**

The Owner may make such investigations as he/she deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.

**15. Nonresident Bids.**

SDCL § 5-18A-26, provides that the Contract shall be let to the lowest responsible bidder; provided, however, a resident bidder may be allowed a preference on any such contract as against the bid of any bidder from any other State or foreign province which enforces or has a preference for resident bidders. The amount of the preference given to the resident bidder shall be equal to the preference in the other state.

**16. Subcontractor Certification.**

SDCL§ 5-18B-6, provides that prior to execution of a public improvement project a successful bidder shall certify on the prescribed form (Exhibit "G"):

- (1) That no more than twenty-percent of the cost of labor included in the contract is being provided by nonresident subcontractors; or
- (2) That more than twenty percent of the cost of labor included in the contract is being provided by nonresident subcontractors because resident contractors are not available and at competitive prices.

**17. Method of Award.**

- a. Bidding procedure involving only a base bid: If the base bid is within the amount of funds available to finance the construction contract, then contract award will be made to that responsible bidder submitting the low base bid. If the low bid exceeds the funds available to finance the construction, the State may negotiate with the low bidder to produce a bid amount within the availability of funds.
- b. Bidding procedure involving a base bid and alternate bids: If the base bid is within the amount of funds available to finance the construction contract and the Owner wishes to accept alternate bids, then contract award will be made to that responsible bidder submitting the low combined bid, consisting of the base bid and any combination of add or deduct alternative bids found to be most advantageous to the Owner. Under this procedure, if the Owner wishes to make award on low base bid only, then contract award will be made to that responsible bidder submitting the low base bid. If the low bid exceeds the funds available to finance the construction, the State may negotiate with the low bidder to produce a bid amount within the availability of funds.

**18. Execution of Agreement.**

Within ten (10) calendar days after the proposed contract agreement is presented to the successful bidder for execution, the successful bidder must execute the contract documents and, *if the Contract is for more than \$50,000.00*, provide a performance and labor and material payment bond.

**19. Performance & Labor and Material Payment Bond.**

If the Contract is for more than \$50,000.00, provide a performance and labor and material payment bond produced by a South Dakota licensed insurance producer (agent) and issued by a South Dakota licensed surety in an amount not less than the amount of the awarded contract. The performance and labor and material payment bond Surety or Sureties shall meet all requirements of South Dakota Law.

This bond is to secure the faithful performance of the contract and the payment of those to whom the bidder may become legally indebted for labor, materials, tools, equipment, or services of any kind used or employed by the bidder in performing the work. The surety bond shall be on the form attached hereto as Exhibit "D". *(Failure on the part of the bidder to furnish such bond in the time stated shall be cause for consideration by the State of awarding the Contract to the second low bidder and the retention of the bid deposit.)*

**20. Power of Attorney.**

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

**21. Default.**

The failure to execute the contract documents or to furnish bonds required by these instructions within ten (10) calendar days after the proposed contract agreement is presented for execution constitutes a default. In the event of a default, the State may award the contract to the next lowest bidder or may re-advertise for bids. The State may charge against the defaulting bidder the difference between the amount of the bid and the amount for which a contract for the work is subsequently executed plus the State's additional administrative cost necessitated by the bidder's failure to execute the Contract Documents, irrespective of whether the amount thus due exceeds the amount of the bid bond. If a more favorable bid is received by re-advertising, the defaulting bidder shall have no claim against the State for a refund.

**22. Commencement of Work/Time of Completion.**

The contractor for the general construction shall commence work under the contract within ten (10) consecutive calendar days after issuance of written Notice to Proceed and shall substantially complete all work under the contract within the timeframe specified in the Bid Form.

**23. Liquidated Damages.**

See Article 10.3.4 of the General Conditions.

**24. Applicable Laws and Regulations.**

The bidder's attention is directed to the fact that all applicable South Dakota laws, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout and they will be deemed to be included in the contract the same as though herein written out in full.

**25. South Dakota Tax Information for Public Contracts.**

Contractors performing public contracts in South Dakota may become responsible for two types of taxes: the excise tax upon realty improvement contracts and the sales/use tax upon materials.

All contractors must secure a license from the Department of Revenue before engaging in the construction activities in this State. Detailed information on tax requirements may be obtained from the Department of Revenue, Anderson Building, Pierre, South Dakota 57501. Telephone 605.773.3311.

**26. Applicable Standards.**

In addition to codes, Standards and Regulations referenced for compliance in the various sections of the Specifications, the work shall be in compliance with the following:

ANSI Z53.1 - 1971, and as revised  
Safety color code for marking physical hazards.

ANSI A13.1 - 1975, and as revised  
Scheme for the identification of piping systems.

ANSI C2, and as revised  
National Electrical Safety Code.

**27. Affirmative Action Plan.**

The State of South Dakota requires that all contractors, vendors, and suppliers, employing fifty or more persons, doing business with any State Agency, Department, or Institution, place on file a statement of Affirmative Action that said contractor, vendor, or supplier does not discriminate in its employment practices with regard to race, color, religion, sex or national origin.

No award of any contract with the State of South Dakota shall be executed or awarded and approved by the State for any service, supply, or commodity unless the successful bidder submits such statement.

Above statement may be submitted to the State Engineer with the contractor's bid, or prior to award of contract.

**28. Procurement Law.**

This project is subject to the provisions of SDCL § 5-18A and 5-18B et seq.

**EXHIBIT "A"**

**BID FORM**

**BID FORM**

**SD STATE FAIR REPLACE/RESURFACE ASPHALT PAVEMENTS  
GRANDSTAND PARKING AND CARNIVAL MIDWAY  
HURON, SD  
OSE#M2316—03X/SWMR**

Date: \_\_\_\_\_

**To:** State Engineer, Office of the State Engineer  
Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501

Phone: 605-773-3466  
Fax: 605-773-5980

The undersigned, being familiar with the local conditions affecting the work, and with the Contract Documents, including the Invitation to Bid, Instructions to Bidders, Bid Form, Explanation of Alternates, Modification to Bid Form, Bid Bond Form, Performance and Payment Bond, Acknowledgment of Surety, Sample Certification of Surety, Non-Resident Bidder Affidavit, Form of Agreement for Construction, General Conditions, Special Conditions, Technical Specifications, Plans and Addenda which govern the purchase of material and labor and the awarding of contracts hereby proposes to do all the work and provide all the material and equipment which pertains to

Replace/Resurface Asphalt Pavements, Grandstand Parking & Carnival Midway, SD State Fair, Huron, SD

OSE# M2316—03X/SWMR

as provided for in the Plan and accompanying Specifications dated \_\_\_\_\_

for the following base bid and alternates:

**BASE BID** \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

**Alternate No. 1** - Add/Deduct to/from the base bid the sum of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

**Alternate No. 2** - Add/Deduct to/from the base bid the sum of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

**UNIT PRICES:**

For changing quantities of work items from those indicated by the contract drawings upon written instruction from the Architect and State Engineer, the following unit prices shall prevail:

- 1. Asphalt Class D with 20% RAP/ton \_\_\_\_\_ \$ \_\_\_\_\_
- 2. Asphalt Binder PG 58-28/ton \_\_\_\_\_ \$ \_\_\_\_\_
- 3. Tack/ton \_\_\_\_\_ \$ \_\_\_\_\_

The above unit prices shall include all labor, materials, bailing, shoring removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for. Changes shall be processed in accordance with Article 14 of the General Conditions.

The Owner also reserves the unrestricted privilege to reject any unit prices for additions to or deductions from the scheduled amount of work as given in the Bid, if the same are considered excessive or unreasonable, or to accept by including the same in the contract as unit prices applicable in the event of addition to or deduction from the work to be performed under the contract, any or all such unit prices which may be considered fair or reasonable.

The above bid includes all applicable State and Municipal Sales and Use Taxes on materials, and State and Municipal Excise Taxes and all other State and Federal Taxes that would affect the amount of the bid. (See Instructions to Bidders-SD Sales and Use Tax Information for Public Contracts.)

In addition, any material furnished by the State for use in this project is subject to Use Tax and Excise Tax. The total taxable value of materials furnished by the State for this project is \$ \_\_\_\_\_ .

*A Performance and Payment Bond as required by General Conditions will not be required on contracts which do not exceed Fifty Thousand Dollars (\$50,000). (See SDCL 5-21-1.1 as amended).*

*If discrepancies remain at the time of substantial completion, a value will be assigned to each of the discrepancies and two (2) times their estimated value will be retained from payment to the Contractor until completed and accepted. (See SDCL 5-18-13 as amended).*

**Within ten (10) days after Contractor's receipt of the Agreement for Construction, the Contractor shall submit to the Office of the State Engineer, the executed Agreement for Construction, Performance and Payment Bond, Certificates of Insurance and Affirmative Action Plan (if applicable).**

**Work shall be commenced within ten (10) consecutive calendar days after written Notice to Proceed by the State Engineer and shall be substantially completed by October 15, 2016.**

The undersigned acknowledges receipt of the following addenda to the drawings and/or specifications (give number and date of each):

Addenda Nos. \_\_\_\_\_ dated \_\_\_\_\_ respectively.

The undersigned acknowledges that they have read and understand the Asbestos-Containing Materials Statement contained in the project manual.

Accompanying this proposal is a certified check, cashier's check or draft in the amount of 5% of the base bid and all add alternates, and drawn on a State or National Bank in the amount of \$ \_\_\_\_\_ or a 10% bid bond issued by a surety authorized to do business in the State of South Dakota, in the amount of \$ \_\_\_\_\_. *(Not applicable if Bid is under \$50,000.)*

In submitting this bid, it is understood that the right is reserved by the Owner to reject any and all bids and to waive any irregularities. It is further understood by the Bidder that he may not withdraw his Bid within 30 days after the actual opening thereof.

In submitting this bid, bidder asserts it has reviewed all provisions of the General Conditions including the provision for assessment of liquidated delay damages found in Article 10 of the General Conditions. Bidder agrees that the damages anticipated by the Owner in the event of delay in completion of the project are uncertain in amount and difficult to prove; the amount stipulated in Article III of the Agreement for Construction is a reasonable amount in light of the anticipated loss and injury; and the Owner's actual damages in the event of delay would be impracticable or extremely difficult to fix. Bidder agrees to be bound by the liquidated damages set forth in Article III of the Agreement for Construction. Bidder further agrees that the liquidated amount stipulated in Article III of the Agreement for Construction is not a penalty.

BIDDER: _____ (Type Name of Firm)
BY: _____ (Signature of Firm's Representative)
_____ (Type Name and Title of Firm's Representative)
TELEPHONE NO. _____
FACSIMILE NO. _____
E-MAIL ADDRESS _____
BUSINESS ADDRESS _____ _____
STATE OF INCORPORATION _____

## **EXPLANATION OF ALTERNATES**

## **BASE BID**

This bid includes cleaning the existing pavement, asphalt concrete leveling, milling at the edges of the new overlay, tacking all existing pavements to be overlaid, installing a 1 ½" asphalt concrete overlay, edge grading and incidentals necessary to overlay the portion of the midway pavement shown on the drawings as "Base Bid".

## **ALTERNATE NO. 1**

This alternate includes excavation and grading, 5" granular base course; 3" asphalt surfacing, erosion control, topsoil, seeding and incidentals to construct a paved 30' X 170' handicap parking area.

## **ALTERNATE NO. 2**

This alternate includes cleaning the existing pavement, asphalt concrete leveling, milling at the edges of the new overlay, tacking all existing pavements to be overlaid, installing a 1 ½" asphalt concrete overlay, edge grading and incidentals necessary to overlay the portion of the midway pavement shown on the drawings as "Alternate No. 2".

**EXHIBIT "A-1"**

**MODIFICATION  
TO BID FORM**

**MODIFICATION  
To Bid Form**

**Replace/Resurface Asphalt Pavements  
Grandstand Parking and Carnival Midway  
SD State Fair, Huron, SD  
OSE# M2316—03X/SWMR**

Date: \_\_\_\_\_

**To:** State Engineer, Office of the State Engineer  
Joe Foss Building  
523 East Capitol  
Pierre, South Dakota 57501

Phone: 605-773-3466  
Fax: 605-773-5980  
Email: [OSE.BIDMOD@state.sd.us](mailto:OSE.BIDMOD@state.sd.us)

Please make the following modifications to our bid on the referenced project. This modification is per the Instructions to Bidders Item #3 included in the original bid documents and modifies our sealed bid.

*Note To Bidder: Please circle the appropriate ADD/DEDUCT and "X" out the undesired action.*

**Modification to Base Bid - ADD / DEDUCT to our Base Bid the Sum of**

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

**Modification to Alternate #1 - ADD / DEDUCT to our Alternate #1 Bid the Sum of**

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

**Modification to Alternate #2 - ADD / DEDUCT to our Alternate #2 Bid the Sum of**

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

**Modification to Alternate #3 - ADD / DEDUCT to our Alternate #3 Bid the Sum of**

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)

**UNIT PRICES MODIFICATION**

UNIT PRICE 1. ADD / DEDUCT \_\_\_\_\_ DOLLARS(\$ \_\_\_\_\_)

UNIT PRICE 2. ADD / DEDUCT \_\_\_\_\_ DOLLARS(\$ \_\_\_\_\_)

UNIT PRICE 3. ADD / DEDUCT \_\_\_\_\_ DOLLARS(\$ \_\_\_\_\_)

The undersigned acknowledges receipt of the following addenda to the drawings and/or specifications (give number and date of each):

Addenda Nos. \_\_\_\_\_ dated \_\_\_\_\_ respectively.

In submitting this modification to bid, it is understood that the right is reserved by the Owner to reject any and all bids and to waive any irregularities. It is further understood by the Bidder that he may not withdraw his Bid within 30 days after the actual opening thereof.

BIDDER: _____ (Type Name of Firm)
BY: _____ (Signature of Firm's Representative)
_____ (Type Name and Title of Firm's Representative)
TELEPHONE NO. _____
FACSIMILE NO. _____
E-MAIL ADDRESS _____
BUSINESS ADDRESS _____ _____
STATE OF INCORPORATION _____

## EXHIBIT "B"

### SAMPLE OF SEALED ENVELOPE

Return Address

John Smith, Contractor

Box 1

Anytown, USA

TO: State Engineer  
(Insert Address for Delivery of Bid,  
found in Bid Advertisement)  
\_\_\_\_\_, South Dakota

Bid For: (Name of Project)  
(Location)  
(OSE# \_\_\_\_\_)

To Be Opened: (Hour & Date)

Addenda Received: Nos. \_\_\_\_\_

**EXHIBIT "C"**

**BID BOND**

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, \_\_\_\_\_

\_\_\_\_\_

as Principal, and \_\_\_\_\_

as Surety, are hereby held and firmly bound unto \_\_\_\_\_

as owner for the penal sum of \_\_\_\_\_ of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The condition of the above obligation is such that whereas the Principal has submitted to \_\_\_\_\_ a certain Bid, attached hereto and hereby made a part hereof to enter into a contract in writing for the \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

NOW, THEREFORE,

- (a) If said Bid shall be rejected, or in the alternate
- (b) If said Bid shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract, attached hereto (properly completed in accordance with said bid) and shall furnish a bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid.

Then this obligation shall be void, otherwise the same shall remain in force and effect: it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extensions of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

\_\_\_\_\_(L.S.)  
Principal

\_\_\_\_\_  
Surety

SEAL By: \_\_\_\_\_

**EXHIBIT “D”**

**PERFORMANCE AND PAYMENT BOND**

**PERFORMANCE AND PAYMENT BOND**

Office of the State Engineer  
523 East Capitol Avenue  
Pierre, SD 57501  
605.773.3466

KNOW ALL MEN BY THESE PRESENTS, THAT WE \_\_\_\_\_

\_\_\_\_\_  
(Contractor – Name and Address)

hereinafter called "Principal", and \_\_\_\_\_

\_\_\_\_\_  
(Surety – Name and Address)

a corporation, organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business in the State of South Dakota, hereinafter called "Surety", are held and firmly bound unto the State of South Dakota, hereinafter called "Obligee", in the just and full sum of \_\_\_\_\_ Dollars(\$\_\_\_\_\_) lawful money of the United States of America to be paid to the State of South Dakota, which payment to be made, we bind ourselves, our heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that:

WHEREAS, Principal has entered into the Contract with Obligee, dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the construction of:

PROJECT NAME: \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

O.S.E. PROJECT NUMBER: \_\_\_\_\_

which Contract is herein referred to and made a part hereof as fully and to the same extent as if the same were entirely written herein; and

WHEREAS, it was one of the conditions of the award by Obligee of the Contract entered into that these presents should be executed.

PROVIDED, FURTHER, that the Surety, for consideration received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract, to work to be performed thereunder or to the specifications accompanying the Contract shall in any manner affect its obligation on this Bond. The Surety hereby does waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal in all respects complies with the terms and conditions of the Contract and his (their or its) obligations thereunder, including specifications therein referred to and made a part thereof and any alteration made in such specifications as herein or therein provided, then this obligation is void, but otherwise remains in full force and effect.

A further condition of this bond is that in the event the Principal fails to pay all just claims and demands on the part of any employee, person, firm or corporation for labor and materials furnished for or used in connection with the prosecution of the work under the Contract, or fails to pay any tax which may accrue to the State of South Dakota under the provisions of the "Use Tax Act of 1939 and The Excise Tax on Realty Improvements under SDCL 10-46A," and Sections 5-21-3 and 5-21-4 of the South Dakota Codified Laws, this bond and the sureties thereon shall be responsible to such person, firm or corporation and to the State of South Dakota for the full payment of the value of such labor and materials so furnished, including payment of South Dakota use taxes and excise taxes on realty improvements.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

**INDIVIDUAL PRINCIPAL**

By \_\_\_\_\_ Typed Name \_\_\_\_\_  
(Affix Seal if available)

**PARTNERSHIP, CORPORATE, OR LLC PRINCIPAL**

By \_\_\_\_\_ Typed Name \_\_\_\_\_  
Title \_\_\_\_\_ Business Name \_\_\_\_\_  
(Affix Corporate Seal if available)  
Address \_\_\_\_\_

**INDIVIDUAL, PARTNERSHIP OR CORPORATE SURETY**

By \_\_\_\_\_ Typed Name \_\_\_\_\_  
Title \_\_\_\_\_ Business Name \_\_\_\_\_  
(Affix Corporate Seal if available)  
Address \_\_\_\_\_

Surety's South Dakota License Number: \_\_\_\_\_

Attorney-In-Fact's Name: \_\_\_\_\_

Attorney-In-Fact's South Dakota License Number: \_\_\_\_\_







**EXHIBIT "E"**

**NON-RESIDENT BIDDER AFFIDAVIT**

**NON-RESIDENT BIDDER AFFIDAVIT**

Country of \_\_\_\_\_ )  
 )ss  
State or Province of \_\_\_\_\_ )

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Affiant's Name and Title: \_\_\_\_\_

Project Name and Location: \_\_\_\_\_

OSE Project Number: \_\_\_\_\_

**AFFIDAVIT WHEN NO PREFERENCE IS GIVEN**

I do hereby affirm that \_\_\_\_\_ resides in the country of \_\_\_\_\_ in the state or province of \_\_\_\_\_ and that said country and/or state or province does not grant a preference to resident bidders for work on behalf of said country, state or province.

Dated: \_\_\_\_\_ Signed \_\_\_\_\_

**AFFIDAVIT WHEN PREFERENCE IS GIVEN**

I do hereby affirm that \_\_\_\_\_ resides in the country of \_\_\_\_\_ in the state or province of \_\_\_\_\_ and that said country and/or state or province does grant a preference to resident bidders for work on behalf of said country, state, or province, the nature and extent of such preference being \_\_\_\_\_.

Dated: \_\_\_\_\_ Signed \_\_\_\_\_

**ACKNOWLEDGEMENT OF AFFIANT**

Country of \_\_\_\_\_ )  
 ) ss  
State or Province of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the affiant who, being duly sworn, declares all statements made in this affidavit to be true and correct to the best of his or her knowledge.

\_\_\_\_\_  
Notary Public

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

**EXHIBIT "E"**

**NON-RESIDENT BIDDER AFFIDAVIT**

**NON-RESIDENT BIDDER AFFIDAVIT**

Country of \_\_\_\_\_ )  
 )ss  
State or Province of \_\_\_\_\_ )

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Affiant's Name and Title: \_\_\_\_\_

Project Name and Location: \_\_\_\_\_

OSE Project Number: \_\_\_\_\_

**AFFIDAVIT WHEN NO PREFERENCE IS GIVEN**

I do hereby affirm that \_\_\_\_\_ resides in the country of \_\_\_\_\_ in the state or province of \_\_\_\_\_ and that said country and/or state or province does not grant a preference to resident bidders for work on behalf of said country, state or province.

Dated: \_\_\_\_\_ Signed \_\_\_\_\_

**AFFIDAVIT WHEN PREFERENCE IS GIVEN**

I do hereby affirm that \_\_\_\_\_ resides in the country of \_\_\_\_\_ in the state or province of \_\_\_\_\_ and that said country and/or state or province does grant a preference to resident bidders for work on behalf of said country, state, or province, the nature and extent of such preference being \_\_\_\_\_.

Dated: \_\_\_\_\_ Signed \_\_\_\_\_

**ACKNOWLEDGEMENT OF AFFIANT**

Country of \_\_\_\_\_ )  
 ) ss  
State or Province of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the affiant who, being duly sworn, declares all statements made in this affidavit to be true and correct to the best of his or her knowledge.

\_\_\_\_\_  
Notary Public

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

**EXHIBIT "G"**

**RESIDENT AND NON-RESIDENT  
SUBCONTRACTOR BREAKOUT**

## Resident and Non-resident Subcontractor Breakout

Company: \_\_\_\_\_ Contract Amount: \_\_\_\_\_

Date: \_\_\_\_\_

Re: Building/Site Name  
 Project Description  
 Campus  
 Location  
 OSE#

### Resident Contractors

Company	Location	Labor Cost	% Value of Contract
<b>Total:</b>			

Non- Resident Contractors

Company	Location	Labor Cost	% Value of Contract
Total:			

As defined in 5-18A:

(26) "Resident," any person, partnership, association, limited liability company, foreign limited liability company, corporation, or foreign corporation licensed to do business within this state that has maintained a substantial and bona fide place of business and has conducted business from within this state for at least one year prior to the date on which a contract was awarded. The members of the partnership or association shall have been bona fide residents of the state for one year or more immediately prior to bidding upon the contract. A foreign corporation licensed pursuant to §§ 47-1A-1501 to 47-1A-1532, inclusive, is not a resident as defined by this section if the state or country in which it is organized enforces or has a preference for resident bidders;

If more than 20% of the labor cost included in the contract is being provided by nonresident subcontractors, please explain: \_\_\_\_\_

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# **AGREEMENT FOR CONSTRUCTION**

PLANS AND SPECIFICATIONS PREPARED  
BY PIERCE & HARRIS ENGINEERING  
(Architect, State Engineer, or Engineer)

PROJECT: Replace/Resurface Asphalt Pavements  
Grandstand Parking & Carnival Midway  
SD State Fair, Huron, SD  
OSE# M2316—03X/SWMR

**AGREEMENT FOR CONSTRUCTION  
PRIME CONTRACT**

THIS Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between  
(the "Contractor") and the \_\_\_\_\_ represented by its legal officers (the "Owner").

WITNESSETH, that the Contractor and the Owner for the consideration stated herein agree as follows:

**ARTICLE I, CONTRACT DOCUMENTS:**

The following documents and any other documents incorporated in them by reference constitute the contract documents:

1. This Agreement
2. The Project Manual dated May, 2016
3. The Project Drawings dated May, 2016
4. Addenda issued prior to execution of this Agreement
5. Contractor's Performance and Labor and Material Payment Bond

These documents constitute the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations, or agreements, either written or oral. The Index for items 2 and 3 is attached hereto as Exhibit "A."

**ARTICLE II, STATEMENT OF WORK:**

To the extent not otherwise provided in the contract documents, contractor shall furnish and pay for all labor, tools, equipment, supplies, materials, appurtenances, utilities, charges, fees, permits, and all other construction accessories and services required to complete the work specified in the contract documents in strict compliance with the contract documents.

**ARTICLE III, DATE OF COMMENCEMENT AND COMPLETION:**

The work shall be commenced within ten (10) consecutive calendar days after the date of issuance of the Notice to Proceed by the Owner and shall be substantially completed no later than October 15, 2016, subject to adjustments of the contract time as provided in the contract documents. Should the Contractor fail to substantially complete the work within the time set forth herein, or within such extra time as may have been allowed by increases in the contract, or by formally approved extensions granted by the Owner, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner \$140.00 per calendar day as liquidated damages for each calendar day of delay until the work is substantially complete.

**ARTICLE IV, CONTRACT SUM:**

- A. For the performance of the work specified in the Contract Documents, Owner will pay Contractor and Contractor will accept as full compensation the sum of \_\_\_\_\_, subject to additions or deductions as provided in the contract documents;

- B. Contract sum includes the following alternates, if any, which are described in the Contract Documents and are hereby, accepted by the Owner:
- C. Unit Prices, if any, are as follows:

Where the quantities originally contemplated are so changed that application of the agreed unit price to the quantity of work performed is shown to create a hardship to the Owner or the Contractor, there shall be an equitable adjustment of the contract to prevent such hardship.

**ARTICLE V, PROGRESS PAYMENTS:**

The Owner shall make progress payments on a monthly basis for work accomplished in accordance with General Conditions, Article 11.

**ARTICLE VI, ACCEPTANCE AND FINAL PAYMENT:**

Final payment less amounts withheld to cover the cost of nonconforming work, shall be made by the Owner in accordance with General Conditions Sub-Article 11.8.

**ARTICLE VII, NOTICE:**

All notices, demands and other communications required by the Contract Documents shall be in writing and shall be deemed to have been duly given if personally delivered, mailed first class (postage prepaid), or e-mailed:

- 1) **If to Contractor:**
  
  
  
  
  
  
  
  
  
  
- 2) **If to Owner:**  
Kristi Honeywell, P.E., State Engineer  
Office of the State Engineer  
523 East Capitol  
Pierre, South Dakota 57501-3182  
Phone: 605.773.3466 Fax: 605.773.5980  
[Kristi.honeywell@state.sd.us](mailto:Kristi.honeywell@state.sd.us)
  
- 3) **If to the Architect:**

Either party may change the addresses set forth for notice herein upon written notice thereof to the other.

**ARTICLE VIII, CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:**

Contractor certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds.

IN WITNESS WHEREOF, THE parties hereto have caused this instrument to be executed in one original counterpart the day and year above first written:

CONTRACTOR:

By: \_\_\_\_\_

(Affix Corporate Seal if Available)

Title: \_\_\_\_\_

Fed. Emp. Tax ID#: \_\_\_\_\_

OWNER: STATE OF SOUTH DAKOTA

\_\_\_\_\_

Exhibit "A"  
 AGREEMENT FOR CONSTRUCTION  
 Enumeration of Contract Documents

1. This agreement
2. The General and Special Conditions contained in the Project Manual dated May, 2016.
3. The Invitation for Bids and Instruction to Bidders contained in the Project Manual dated May, 2016.
4. The Specifications are those contained in the Project Manual dated ^ and are as follows:

Section	Title	Pages
1	Index	1
2	Invitation to Bid	1
3	Bidder's Checklist	1
4	Asbestos Containing Materials Statement	1-2
5	Instructions to Bidders	1-6
A	Bid Form and/or Explanation of Alternates	1-2
A-1	Modification to Bid Form	1-2
B	Format for Sealed Envelope	1
C	Bid Bond	1-2
D	Performance & Payment Bond With Acknowledgment of Surety	1-5
E	Non-Resident Bidder Affidavit	1
F	Contractor's Statement of Skills & Capabilities	1-4
G	Resident Subcontractor Certification	1-2
6	Agreement for Construction	1-4
7	General Conditions and Index	1-32
8	Special Conditions – Not Used	
9	Technical Specifications - Standard SDDOT Specifications	

5. The drawings are as follows:

Number	Title	Date May, 2016
1	Title Sheet	1
2	General Notes & Quantities	1
3	Construction Plan	1
4	Detail Sheet	1
5	Low Flow Silt Fence Details	1

6. The addenda, if any, are as follows:

Number	Date	Pages
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7. The Performance and Labor and Material Payment Bond dated \_\_\_\_\_  
Issued by \_\_\_\_\_. Bond # \_\_\_\_\_.
  
8. Other documents forming a part of the Contract Documents are:

**GENERAL CONDITIONS**

**TO**

**AGREEMENT FOR CONSTRUCTION**

**FOR**

REPLACE/RESURFACE ASPHALT PAVEMENTS  
GRANDSTAND PARKING AND CARNIVAL MIDWAY  
**SD STATE FAIR, HURON, SD**  
**OSE# M2316—03X/SWMR**

INDEX

Article

Definitions ..... 1

Execution, Correlation & Intent ..... 2

Ownership, Use of Documents, Confidentiality of Documents ..... 3

Ownership of Work Product ..... 3.1

Confidentiality of Documents ..... 3.2

Return of Documents..... 3.3

Terms to Be Included in Subcontracts ..... 3.4

A/E's Responsibilities ..... 4

Owner's Rights & Responsibilities ..... 5

Information & Services Required of the Owner ..... 5.1

Owner's Right to Stop the Work ..... 5.2

Owner's Right to Carry Out the Work..... 5.3

Owner's Right to Access for Observation or Other Work ..... 5.4

Contractor's Responsibilities ..... 6

Review of Contract Documents ..... 6.1

Supervision & Construction Procedures ..... 6.2

Labor & Materials ..... 6.3

Substitutions ..... 6.3.4

Guarantees/Warranty ..... 6.4

Taxes ..... 6.5

Permits, Fees & Notices ..... 6.6

Superintendent ..... 6.7

Construction Progress Schedule ..... 6.8

Documents & Samples at the Site ..... 6.9

Shop Drawings, Product Data & Samples ..... 6.10

Shop Drawing & Product Data Procedures ..... 6.10.9

Samples Procedures ..... 6.10.10

Use of Site ..... 6.11

Cutting & Patching of Work ..... 6.12

Cleaning Up..... 6.13

Communications ..... 6.14

Royalties & Patents ..... 6.15

Indemnification..... 6.16

Default ..... 6.17

Subcontractors ..... 7

Definitions ..... 7.1

Award of Subcontracts & Other Contracts ..... 7.2

Subcontractual Relations ..... 7.3

Work by Owner or by Separate Contractors..... 8

Owner's Right to Perform Work & Award Separate Contracts ..... 8.1

Mutual Responsibility ..... 8.2

Owner's Right to Clean Up..... 8.3

Miscellaneous Provisions ..... 9

Governing Law ..... 9.1

Successors & Assigns ..... 9.2

Written Notice ..... 9.3

Claims for Damages ..... 9.4

Performance & Labor and Material Payment Bond..... 9.5

Rights & Remedies..... 9.6

Tests ..... 9.7

Litigation ..... 9.8

Time .....	10
Definitions .....	10.1
Progress & Completion .....	10.2
Delays & Extensions of Time.....	10.3
Beneficial Occupancy.....	10.4
Payments & Completion .....	11
Contract Sum .....	11.1
Schedule of Values.....	11.2
Monthly Application for Payment .....	11.3
Recommendation for Payment.....	11.4
Progress Payments .....	11.5
Payments Withheld .....	11.6
Substantial Completion .....	11.7
Final Completion & Final Payment.....	11.8
Protection of Persons & Property.....	12
Safety Precautions & Programs .....	12.1
Safety of Persons & Property.....	12.2
Emergencies .....	12.3
Insurance .....	13
Workmen’s Compensation Insurance.....	13.1.1
Commercial General Liability Insurance .....	13.1.2
Business Automobile Liability Insurance .....	13.1.3
All-Risk Builder’s Risk Insurance.....	13.1.4
Certificates of Insurance .....	13.2
Changes in the Work.....	14
Change Orders .....	14.1
Site Conditions.....	14.4
Claims for Additional Cost .....	14.5
Minor Changes in the Work.....	14.6
Uncovering & Correction of Work .....	15
Uncovering of Work.....	15.1
Correction of Work .....	15.2
Acceptance of Defective or Non-Conforming Work .....	15.3
Termination of the Contract .....	16
Termination by the Contractor.....	16.1
Termination by the Owner .....	16.2
Termination for Convenience .....	16.3

## **Article 1 Definitions**

- 1.1 Owner:** The owner is the State of South Dakota acting through the legally appointed commissioner for the Bureau of Administration and his representative, the Office of the State Engineer.
- 1.2 Architect/Engineer:** The term "architect/engineer" (hereinafter A/E) means the person or entity identified as such on the cover sheet to the drawings or plans and his/her authorized representative including his/her consulting engineer(s).
- 1.3 Contractor:** The term "contractor" means the person or entity identified as such in the Agreement for Construction and his authorized representatives.
- 1.4 Subcontractor:** Any individual, firm or corporation to whom the Contractor sublets any part of the contract for supplying materials and labor, or only labor, at the site of the project.
- 1.5 The Contract Documents:** The documents identified as the Contract Documents in the Agreement for Construction.
- 1.6 The Contract:** The Contract Documents form the contract. The contract may be amended or modified only in writing in the manner set forth in Article 14. Nothing contained in the Contract Documents shall create any contractual relationship between the owner and any subcontractor, sub-subcontractor or supplier.
- 1.7 The Work:** The completed construction required by the Contract Documents, and every part thereof, and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated into such construction.
- 1.8 The Project:** The total construction of which the work performed under the Contract Documents may be the whole or a part.
- 1.9 The Drawings or Plans:** The graphic and pictorial portions of the Contract Documents showing the design, dimensions and layout of the work including, but not limited to, plan views, elevation views, details, sections, schedules, and diagrams.
- 1.10 The Specifications:** The written requirements in the Contract Documents for materials, equipment, construction systems, standards and workmanship.
- 1.11 The Project Manual:** The manual compiled for the work containing the Invitation for Bid, Instructions to Bidders, blank form of Bid Bond, blank form of Agreement for Construction, blank form of Performance and Labor and Material Payment Bond, sample forms, General Conditions, and Special Conditions.

## **Article 2 Execution, Correlation and Intent**

- 2.1** By executing the contract, the contractor represents he has examined the plans, specifications, site of the proposed Work and Contract Documents in accordance with the requirements of the Instructions to Bidders.
- 2.2** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. All work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such work is to be done by others. Should the Drawings or the Specifications disagree in themselves or with each other, the Contractor shall provide the better quality or greater quantity of work and/or materials unless otherwise directed by written change.
- 2.3** The organization of the Specifications into Divisions, Sections and Articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

**2.4** Neither the Owner nor the A/E assumes any liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Specifications and Drawings.

**2.5** The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the work of the mechanical, electrical, and other specialized trades, and to all of the Sections of the Specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. The Contractor shall promptly report any discrepancy or omission which it observes in the Construction Documents and any need for clarification or interpretation to the Owner and the A/E. The Contractor's failure to do so will cause any additional cost incurred by the Contractor to be its sole responsibility. The Contractor shall number Requests for Information in consecutive order. The Contractor shall maintain a log of each Request for Information indicating the date it was issued, the date or dates of any correspondence and/or discussions on the Request for Information, and the date a final answer is received.

**2.6** The General Conditions and the Special Conditions are a part of each Section of the Specifications. The Special Conditions for Mechanical and Electrical Trades, if any, are part of each Section of the Specifications referenced therein, and apply to the work of the trades affected thereby.

**2.7** A typical or representative detail indicated on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Construction Documents, the Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to prior approval by the A/E. Repetitive features shown in outline on the drawings shall be in exact accordance with corresponding features completely shown.

**2.8** The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories indicated on the Drawings is diagrammatic, and all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. Actual layout of the Work shall be carried out without affecting the architectural, engineering and structural integrity and limitations of the Work and shall be performed in such sequence and manner as to avoid conflicts, provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment, obtain maximum headroom, and provide adequate clearances as required for operation and maintenance.

**2.9** The Drawings shall not be scaled for dimensions. If figured dimensions are not given on the Drawings, the Contractor shall request same from the A/E giving reasonable advance notice.

**2.10** All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

**2.11** Where codes, standards, requirements and publications or public and private trade associations or other bodies are referred to in the Specifications, references shall be understood to be in the latest revision prior to the date of receiving bids, except where otherwise indicated.

**2.12** Where no explicit quality or standards for materials or workmanship are established for work, such work is to be of good quality for the intended use and consistent with the quality of the surrounding work, of the construction of the Project generally, and industry standards.

**2.13** All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents. A copy of the manufacturer's written or printed directions shall be provided to the Owner upon completion of the project.

### **Article 3**

#### **Ownership, Use of Documents, Confidentiality of Documents.**

##### **3.1 Ownership Of Work Product**

Any plans, specifications, engineering calculations, technical data, reports, miscellaneous drawings, and all information contained therein provided by the State, its consultants, employees, contractors and agents to the contractor for the contractor's performance of its obligations under this agreement are the property of the State. They are to be used only with respect to this

Project and are not to be used for any other project. The contractor may not disseminate these materials to any person or entity nor may the contractor use these materials for purposes other than work for the state, without the express written approval of the state. The state shall not unreasonably withhold such approval for dissemination of these materials as necessary to subcontractors and suppliers.

### **3.2 Confidentiality Of Documents**

All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided to or prepared by the contractor, its owners, officers, employees, agents, consultants, suppliers, and subcontractors in connection with the contractor's performance under this Agreement are confidential and the contractor, its owners, officers, employees, agents, consultants, suppliers, and subcontractors shall not disclose this information to any person, individual, or entity without the express written permission of the state.

### **3.3 Return Of Documents**

All documents covered by Article 3 shall be delivered to the A/E at the completion of the work. The contractor may not retain any such documents for its own use without the express written permission of the state and any documents that are retained, with or without state permission, shall be subject to all of the requirements of Article 3.

### **3.4 Terms To Be Included In Subcontracts**

The contractor shall include the requirements of Article 3 in any contract it enters into with any consultants, subcontractors, suppliers, persons, individuals, or entities for the performance of any of the contractor's obligations under this agreement.

## **Article 4 A/E'S RESPONSIBILITIES**

**4.1** The A/E, under the direction of the State Engineer, will provide administration of the Contract as hereinafter described. The A/E will represent the Owner during construction. The A/E will advise and consult with the Owner. The Owner's instructions to the Contractor may be forwarded through the A/E. The A/E will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with Sub-Article 4.15.

**4.2** The Contractor shall accept instructions only from the A/E or State Engineer, and not the A/E's consulting engineers, except as the A/E and State Engineer shall authorize in writing.

**4.3** The A/E will visit the construction site at intervals appropriate to the stage of construction to keep generally familiar with the progress and quality of the work completed and to determine in general if the Project is being constructed in a manner such that when completed it would be in conformance with the plans and specifications and other Contract Documents. The A/E will not, however, be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work. On the basis of such observations or inspections, the A/E shall keep the Owner informed of the progress and quality of the work on the Project and endeavor to guard the Owner against defects and deficiencies in the work of the Contractor. The A/E will maintain written reports of all site visits.

**4.4** The A/E shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, since these are solely the Contractor's responsibilities under the Agreement for Construction. The A/E shall not be responsible for the Contractor's schedules or failure to carry out the Project in accordance with the Contract Documents. The A/E shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Project, except to the extent that the A/E may formally notify the Contractor of the unacceptability of various portions of the Project or failure to carry out the Work on the Project in accordance with the Contract Documents.

**4.5** The A/E will inform the Contractor on behalf of and in consultation with the Owner to cease work on the Project or portions thereof affected by those items that are unacceptable and remain uncorrected until such time as corrections are made.

**4.6** The A/E shall at all times have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access so the A/E may perform his functions under the Contract Documents.

**4.7** Except as may otherwise be provided in the Contract Documents or when direct communications have been approved by the A/E, the Owner and its representatives and the Contractor shall communicate through the A/E. Communications by and with the A/E's consultants shall be through the A/E.

**4.8** The A/E will determine the amounts owing to the Contractor based on inspections and observations at the site, and on evaluations of the Contractor's Monthly Applications for Payment, and shall issue Certificates of Payment for amounts due on forms provided by the State Engineer. A Certificate of Payment constitutes a representation by the A/E to the Owner, based upon the inspections and the information provided by the Contractor in the Application, that the Project has progressed to the point indicated; that to the best of the A/E's knowledge, information and belief, the quality of the work on the Project is in accordance with the Contract Documents; and that the Contractor is entitled to payment in the amount certified.

**4.9** The A/E shall have authority to reject work on the Project which does not conform to the Contract Documents. Whenever the A/E considers it necessary or advisable for implementation of the intent of the Contract Documents, the A/E will have authority to recommend to the Owner additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed. However, neither this authority of the A/E nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the A/E to any Construction Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work on the Project.

**4.10** The A/E shall review and approve or take other appropriate action on Shop Drawings, Product Data and Samples submitted by Construction Contractors to determine if they conform with the design concept for the Project and with the information provided in the Contract Documents, and submit these documents or information to the Owner indicating the A/E's approval or comments with reasonable promptness so as to cause no delay to the prosecution of the Project.

Approval or acceptance of a specific item shall not necessarily indicate the A/E's approval of an assembly of which the item is a component. When professional certification of equipment is required by the Contract Documents, the A/E will be entitled to rely upon that certification to determine that the materials, systems, or equipment will meet the performance criteria required in the Contract Documents.

**4.11** The A/E will conduct, at the time and place approved by the Owner, with representatives of the State agencies involved in the Project and the Contractor, inspections to establish dates of Project acceptance and completion. The A/E shall have other A/Es, Structural, Mechanical, or Electrical Engineers, or other consultants in their employ in attendance at this and at various progress inspections as may be necessary to evaluate whether the work completed on the Project is in conformance with the Contract Documents. The A/E will receive and forward to the Owner, with comments on completeness or acceptability, those warranties, operation manuals, and other documents required by the Contract Documents and assembled by the Contractor.

**4.12** The A/E will review the final estimate for final payment to the Contractor and provide a Certificate of Final Payment to the Owner.

**4.13** The A/E will provide to the Owner or the Contractor, upon written request in the form of a Request for Information, interpretations and decisions in writing, or in the form of drawings, on matters concerning performance under the Contract Documents, and execution or performance of the Work on the Project. Response to such requests shall be made with reasonable promptness and within any time limits agreed upon. The final decision on all such questions shall be made by the State Engineer.

**4.14** The A/E will prepare Change Orders in accordance with Article 14, and will have authority to order minor changes in the Work as provided in Sub-Article 14.6.

**4.15** The duties, responsibilities and limitations of authority of the A/E as the Owner's representative during construction as set forth in the Contract Documents will not be modified or extended without written consent of the Owner, the Contractor and the A/E.

**4.16** In case of the termination of the employment of the A/E, the Owner shall appoint a replacement A/E whose status under the Contract Documents shall be that of the former A/E.

## **Article 5 OWNER'S RIGHTS AND RESPONSIBILITIES**

### **5.1 Information and Services Required of the Owner.**

**5.1.1** The Owner shall furnish a survey describing the legal limitations and utility locations for the site of the project.

**5.1.2** The Owner shall secure and pay for necessary easements, and other property rights required for the construction of the Project.

**5.1.3** Information under the Owner's control shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information.

**5.1.4** Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, 2 sets of paper prints of Drawings and 3 sets of Specifications necessary for the execution of the Work.

**5.1.5** The Owner may forward instructions to the Contractor through the A/E or give instructions through the State Engineer.

**5.1.6** The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by the Owner or by separate contractors, Payments and Completion, and insurance in Articles 8, 10, 11 and 13.

**5.2 Owner's Right to Stop the Work:** If the Contractor fails to correct defective Work as required by Article 15 or fails to carry out the Work in accordance with the Contract Documents in any material respect, the Owner, in addition to its other remedies, by a written order signed by the State Engineer or by the State Engineer's designated representative may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

**5.3 Owner's Right to Carry Out the Work:** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents in any material respect and fails within three working days after receipt of written notice from the Owner or in such time as may be established in written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, or if the Work is not being performed properly or in accordance with the scheduling provisions of the Contract Documents in any material respect, whether or not the Contractor is in default, the Owner may, after the expiration of such notice period and without prejudice to any other remedy he may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the A/E's and State Engineer's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand. If, in the sole judgment of the Owner, an emergency exists as a result of the Contractor's default, neglect or failure to correct defective work, which in the Owner's opinion, requires more immediate corrective action than the Contractor is able to provide, then the Owner may, without notice to the Contractor, perform such corrective work or cause it to be performed by others. The Owner shall also have the right to carry out the Work, or any part thereof, during the period of any work stoppage without terminating the Contract. If the Owner wishes to exercise this right it will give the Contractor three days notice of its intent to do so. In any such case, an appropriate deductive Change Order shall be issued in accordance with Article 14, the amount of which shall not exceed an amount which equals the estimated direct cost, including the State Engineer's fees, of performing the work which the Owner elects to perform and the proportionate amount of the Contractor's fee associated therewith.

**5.4 Owner's Right to Access for Observation or Other Work:** The Owner reserves the right of access to any part of the Work, at any time, for the purpose of observation, or testing, or to install other work, either with its own forces or with separate contractors. Such access is not to be construed to mean partial occupancy by Owner, and no claim for additional compensation by the Contractor because of such access or installation of work will be considered. Contractor shall cooperate with Owner during Owner's access or performance of work.

## **ARTICLE 6 CONTRACTOR'S RESPONSIBILITIES**

**6.1 Review of Contract Documents:** The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner and the A/E any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner or the A/E for any damage resulting from any such errors, inconsistency or omission he may discover and report, nor for any damage resulting from any such errors, inconsistencies or omissions which he could not reasonably have discovered. The Contractor shall perform no portion of the work at any time without Construction Documents or, where required, Shop Drawings, Product Data or Samples for such portions of the Work bearing the A/E's appropriate action stamp.

**6.2 Supervision and Construction Procedures.**

**6.2.1** The Contractor shall supervise and direct the Work, using the skill and attention necessary to complete the Work in a workmanlike manner. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the contract. Neither the Owner nor the A/E shall have control over, or responsibility for, any such matters.

**6.2.2** Nothing contained in the Contract Documents shall be interpreted by implication or otherwise as a direction by the A/E or the Owner to the Contractor as to construction means, methods, techniques, sequences and procedures. If there is express reference to such means, methods, techniques, sequences and procedures, it is solely for the purpose of insuring that the Work will be produced in accordance with the desired objectives as set forth in the Construction Documents but such express reference shall in no way relieve the Contractor of his responsibilities in connection therewith. If the Contractor does not wish to accept the responsibility for any means, techniques, sequences or procedures which are expressly set forth in the Construction Documents, then the contractor shall notify the A/E in writing of the actual means, methods, techniques, sequences and procedures which he will employ on the Work if these differ from those expressly referred to in the Construction Documents. All loss, damage or liability or cost of correcting defective Work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor notwithstanding that any of the same shall have been referred to expressly in the Construction Documents.

**6.2.3** The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors, Sub-subcontractors, materialmen and suppliers and their agents and employees, and other persons performing any of the Work.

**6.2.4** The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the A/E in his administration of the Contract, by the use or occupancy of part of the Work by the Owner as provided in Sub-Article 5.4, by the performance of work related to the Project by others as provided in Sub-Article 8.1, or by inspections, tests or approvals required or performed under Sub-Article 9.7 by persons other than the Contractor.

**6.2.5** The Contractor shall retain a competent Registered Professional Engineer or Registered Land Surveyor, acceptable to the Owner and A/E, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the site and shall establish sufficient lines and grades for the construction of associated work such as, but not limited to, roads, utilities and site grading. The Engineer or Land Surveyor shall certify as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries.

**6.2.6** The Contractor shall establish the building grades, lines, levels, column, wall and partition lines required by the various Subcontractors in laying out their work.

**6.2.7** The Contractor shall coordinate and supervise the work performed by Subcontractors to the end that the work is carried out without conflict between trades or jurisdictional disputes and so that no Subcontractor, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each other Subcontractor, any separate contractor, and the Owner, every reasonable opportunity for the installation of work and the storage of materials, and shall provide access to and the use of necessary loading dock and hoist facilities, adequate storage room and necessary utilities and other services.

**6.2.8** Wherever the work of a Subcontractor is dependent upon the work of other Subcontractors, or the Contractor, the Contractor shall require the Subcontractor to:

**6.2.8.1** Coordinate his work with the dependent work;

**6.2.8.2** Provide necessary dependent data and requirements;

**6.2.8.3** Supply and/or install items to be built into dependent work of others;

**6.2.8.4** Make provisions for dependent work of others;

**6.2.8.5** Examine dependent drawings and specifications;

- 6.2.8.6 Examine previously placed dependent work;
- 6.2.8.7 Check and verify dependent dimensions of previously placed work;
- 6.2.8.8 Notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of his work; and
- 6.2.8.9 Not proceed with his work until the unsatisfactory dependent conditions have been corrected.

Installation of Work by a Subcontractor in any given area shall constitute acceptance by the Subcontractor and Contractor of the previously placed dependent work.

### **6.3 Labor and Materials.**

**6.3.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified. All connection charges, assessments or inspection fees which may be imposed by any public agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility, except the final water and sewer connection charges which shall be paid by the Owner.

**6.3.2** The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Contractor shall be responsible to maintain and observe, and to require his Subcontractors to maintain and observe, sound labor practices, and shall require each Subcontractor to take all steps reasonably necessary to avoid labor disputes or stoppages.

**6.3.3** Except in the event of emergency, no substantial field operations shall be performed outside of regular working hours without the prior notification of the A/E and the Owner. The Contractor will not be entitled to additional compensation for work performed outside of regular working hours except as otherwise expressly agreed in writing by the Owner prior to the performance of such overtime work. Additional compensation for such authorized overtime shall be limited to the direct cost of the premium portion only of such authorized overtime. No additional indirect cost or fee shall be included.

#### **6.3.4 Substitutions**

**6.3.4.1** The products, materials and equipment of manufacturers referred to in the Specifications and on the Drawings are intended to establish the standard of quality and design required by the A/E; however, products, materials and equipment manufacturers, other than those specified, may be used, if equivalent and approved in writing by the A/E.

**6.3.4.2** It is deemed that the term 'or approved equal' is included after all products, materials and equipment referred to in the Specifications or on the Drawings.

**6.3.4.3** The Owner in consultation with the A/E will be the sole judge of equivalency of proposed substitute products, materials, and equipment. The A/E will make written recommendation of acceptance or rejection to the Owner. The Owner will then authorize the A/E to issue to the Contractor written approval or rejection of the substitution.

**6.3.4.4** If the Contractor desires to use a substitute item, he shall make application to the A/E in writing in sufficient time (having regard to the progress of the Work, the period of delivery of the goods concerned and adequate time for the Owner's and A/E's review) stating and fully identifying the proposed substitute, cost changes (if any), and submitting substantiating data, sample, brochures, etc. of item proposed. It is the Contractor's responsibility to provide sufficient evidence by tests or other means to support any request for approval of substitution.

**6.3.4.5** Prior to proposing any substitute item, the Contractor shall satisfy himself that the item he proposes is, in fact, equal to that specified, that it will fit into the space allocated, that it affords comparable ease of operation, maintenance and service, that its appearance, longevity and suitability for the climate and use are comparable to that specified, and that the substitution is in the Owner's best interest.

**6.3.4.6** The burden of proof that a proposed substitution is equal to a specified item shall be upon the Contractor, who shall support his request with sufficient test data and other means to permit the State Engineer and A/E to make a fair and equitable decision on the merits of the proposal. Any item by a manufacturer other than those cited in the Contract Documents, or of brand name or model number or of generic species other than those cited in the Contract Documents will be considered a substitution.

**6.3.4.7** Materials and methods proposed as substitutions for specified items shall be supported by certification of their acceptance for use by an authority, person or persons having jurisdiction over the use of the specified material or method.

**6.3.4.8** Acceptance of substitutions shall not relieve the Contractor from responsibility for compliance with all the requirements of the Construction Documents. The Contractor shall be responsible at his own expense for any changes in other parts of the work of his Contract or the work of other contractors caused by his substitutions, including cost of all design and redesign services related thereto incurred by the A/E and his consultants.

**6.3.4.9** The Contract completion time shall not be extended by any circumstances resulting from a proposed substitution, nor shall the Contractor be entitled to any compensation for any delay caused thereby or related thereto.

**6.3.4.10** All costs for the evaluation of proposed substitutions, whether approved or not, shall be borne by the Contractor.

**6.3.5** All materials and equipment shall be delivered, handled, stored, installed and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with Contract Document requirements. The Contractor will store packaged materials and equipment in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use, and deliver materials and equipment in ample time to facilitate inspections and tests prior to installation. The term 'delivery' in reference to any item specified or indicated, means the unloading and storing with proper protection at the project site. Damaged materials or equipment will be rejected and removed from the site by the Contractor.

**6.3.6** Before ordering materials, equipment, or performing Work, the Contractor shall verify indicated dimensions. If a discrepancy exists, the Contractor shall notify the A/E of same immediately. The A/E will then clarify the intended design. The Contractor shall take field measurements required for the proper fabrication and installation of the Work. Upon commencement of any item of Work, the Contractor shall be responsible for dimensions related to such item of Work.

#### **6.4 Guarantees/Warranty.**

**6.4.1** The Contractor guarantees and warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the A/E or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This guarantee/warranty is not limited by the provisions of Sub-Article 15.2.

**6.4.2** The Contractor will indemnify the Owner against loss, including loss of use and lost revenues resulting from a breach of the Contractor's guaranty and warranty under Sub-Article 6.4.1, whether the loss arises before or after the Owner's acceptance of the Project.

**6.4.3** Where the contract documents provide for equipment and material warranties in addition to the Contractor's guarantees' and warranty contained in Sub-Article 6.4.1, such warranties shall at a minimum:

**6.4.3.1** Provide that the term of the warranty shall start on the date of substantial completion of the project or the date the Owner takes beneficial occupancy of any portion of the project that requires the use or start-up of the warranted equipment or material, whichever date occurs first.

**6.4.3.2** Provide for complete repair or replacement of defective equipment or material;

**6.4.3.3** Provide all materials, shipping, and labor necessary to repair or replace defective equipment or material at no expense to the Owner;

**6.4.3.4** Provide that any replacement parts used in repairing or replacing defective equipment or material shall be new or in a like-new condition.

**6.4.3.5** Provide for the complete repair or replacement of defective equipment or material within two weeks after receiving written notice of the defect, provided however, that the Owner can, at its sole discretion, grant an extension of time for good cause shown; and

**6.4.3.6** Provide for no limitation of liability should the Contractor and/or manufacturer fail to repair or replace defective equipment or material within the time specified in Sub-Article 6.4.3.4 or should the remedy of repair or replacement otherwise fail.

**6.4.3.7** Be construed under South Dakota law.

**6.4.3.8** Provide that any legal action brought on the warranty shall be brought only in a South Dakota court.

**6.5 Taxes:** The Contractor shall pay all sales, consumer, use, excise, and other similar taxes for the Work or portions thereof which are to be provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

**6.6 Permits, Fees and Notices.**

**6.6.1** The Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required at the time the bids are received. The State does not require that inspection and license fees be paid to a municipality for work performed on State property.

**6.6.2** The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall indemnify the Owner and the A/E against all costs, fines and damages, and all actions, claims and proceedings, due to its failure to do so.

**6.6.3** The Contractor and its Subcontractors shall acquaint themselves with all codes governing their work and shall complete the work in conformance with all codes governing their work.

**6.6.4** It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner and the A/E in writing, and any necessary changes shall be accomplished by appropriate modification.

**6.6.5** If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner and the A/E, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

**6.7 Superintendent:** The Contractor shall employ a competent superintendent and necessary assistants all of whom are acceptable to the Owner and who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. The Superintendent shall not be changed without the Owner's consent.

## **6.8 Construction Progress Schedule.**

**6.8.1** The Contractor shall, within 5 days, or within such time as determined by the A/E, after date of Notice to Proceed, prepare and submit to the A/E for approval a reasonable schedule showing the critical path, order in which the Contractor proposes to carry on the work and, the date on which he will start the several salient features (including procurement of materials, plant and equipment). The progress schedule shall indicate appropriately the percentage of work scheduled for completion at any time. If at any time the sequence of work is modified, the Construction Progress Schedule shall be updated.

**6.8.2** The Construction Progress Schedule shall reflect the time required for the preparation and processing of shop drawings and submittals and the lead time required in connection with the procurement of manufactured or processed materials and equipment.

**6.8.3** The Contractor shall furnish sufficient forces, construction plant, and equipment, and shall work such hours, including night shifts, overtime operations, and Sunday and holiday work, as may be necessary to insure the prosecution of the work in accordance with the approved progress schedule.

**6.8.4** Whenever major portions of the Work fall behind the planned schedule, the Owner and A/E shall be notified and advised of action being taken to return the project to its original schedule and such action shall be indicated on the Construction Progress Schedule which shall then be reissued. If, in the opinion of the A/E and Owner, the Contractor is not taking adequate steps to improve or maintain the progress of the work, the A/E and Owner may require him to increase the number of shifts, and/or overtime operations, days of work, and/or the amount of construction plant, all without additional cost to the Owner.

**6.9 Documents and Samples at the Site:** The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be available to the A/E and Owner and shall be delivered to A/E for the Owner upon completion of the Work.

## **6.10 Shop Drawings, Product Data and Samples.**

**6.10.1** Shop Drawings are drawings, diagrams, schedules or other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**6.10.2** Product Data are illustrations, standard schedules, performance charts, instructions brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

**6.10.3** Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**6.10.4** The Contractor shall submit a schedule for submittal of Shop Drawings, Product Data and Samples to the A/E for review. The Contractor shall review, approve and submit to the A/E, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the A/E or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents, in accordance with the schedule reviewed by the A/E.

**6.10.4.1** The A/E reserves the right to review Shop Drawings, Product Data, Samples and submittals in a sequence consistent with the sequence of erection, installation and assembly of the various elements of the Work.

**6.10.4.2** The Contractor's identification of Shop Drawings, Product Data and Samples shall include verification of information required in Sub-Articles 6.10.9.2 and 6.10.10.2.

**6.10.4.3** No extension of time will be granted, nor will any consideration be given to claims arising out of the Contractor's failure to submit any Shop Drawing, Product Data, Samples or related submittals according to the schedule or otherwise in a manner which does not allow adequate lead time for A/E's review, or does not allow ample time for revision, resubmission and subsequent review by the A/E as required.

**6.10.4.4** Composite Drawing: In the interest of coordination and expediting the work in critical areas, i.e. exterior wall components, mechanical/electrical systems, and other areas so requested by the A/E, the Contractor shall prepare and submit, to the A/E for review, Composite Drawings embodying the Work of the various trades and/or Subcontractors involved. After review, the Contractor shall distribute prints or reviewed Composite Drawings to affected trades and/or Subcontractors. The Contractor shall require that the involved trades and/or Subcontractors cooperate in preparation of the Composite Drawings to assure proper coordination between trades and/or Subcontractors. The participating trades and/or Subcontractors shall indicate their approval on these drawings.

**6.10.5** By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurement, and field construction criteria related thereto, checked the Shop Drawings, Product Data, and Samples for complete dimensional accuracy; that he has checked to insure that work contiguous with and having bearing on the work shown on the Shop Drawings is accurately and clearly shown, that he has checked the Shop Drawings against the Composite Drawings prepared by the Contractor, that the Work has been coordinated and that the equipment will fit into the assigned spaces, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Construction Documents.

**6.10.5.1** Any Shop Drawing, Product Data or Sample submitted without Contractor's approval will not be processed for review by the A/E, but will be returned to the Contractor for his compliance with the above procedures, in which event it will be deemed that the Contractor has not complied with the provisions herein specified and the Contractor shall bear the risk of all delays as if no Shop Drawing, Product Data and Sample had been submitted.

**6.10.5.2** Shop Drawings shall bear a coordination and approval stamp signed by the Contractor and each contiguous Subcontractor, which shall confirm the representations set forth in Sub-Article 6.10.5. Shop Drawings shall bear the seal of a registered professional engineer or A/E when required by the Specifications or State Law.

**6.10.6** The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Construction Documents by the A/E's approval of Shop Drawings, Product Data or Samples under Sub-Articles 4.10 and 6.10.9 unless the Contractor has specifically informed the A/E in writing of such deviation at the time of submission and the A/E has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the A/E's approval thereof. Any deviation shall also be indicated on such Shop Drawing, Product Data, Sample, or related submittal by circling or other approved means.

**6.10.7** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the A/E on previous submittals. Unless such written notice has been given, the A/E's Action on a resubmitted Shop Drawing, Product Data, or Sample shall not constitute Review and Action of any changes not requested on the prior submittal.

**6.10.8** No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the A/E as provided in Sub-Article 6.10.9. All such portions of the Work shall be in accordance with approved submittals.

**6.10.8.1** No Shop Drawing, Product Data or Sample shall be issued to the field without the A/E's Action Stamp affixed thereto.

#### **6.10.9 Shop Drawing & Product Data Procedures**

**6.10.9.1 Shop Drawing Requirements:** Shop Drawings shall show design, materials (kind, thickness and finish), dimensions, connections, rough openings, routing details, and other details necessary to insure that they accurately interpret Contract Drawings and Specifications and also show adjoining work in such detail as required to provide proper connection with same. Shop Drawings shall be numbered consecutively and insofar as possible shall be uniform in size.

**6.10.9.2 Identification:** All Shop Drawings and Product Data shall be identified with the name of the Project, Project Number, building or buildings for which the Shop Drawings and Product Data are being submitted, and shall contain the A/E's name, Contractor's name, Subcontractor's name, date of submittal, drawing number,

revision, if any, as well as the Specification Section under which the Work is to be performed and the Drawing and detail numbers that relate to the Shop Drawings and Product Data.

**6.10.9.3 Transmittals:** All Shop Drawings and Product Data shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification information as required above under Sub-Article 6.10.9.2. Contractor shall number transmittals consecutively in sequence with the sample transmittals and shall indicate the Submittal Procedure number being followed. Transmittal shall also indicate if Shop Drawing is resubmittal and note A/E's file number for original submittal.

**6.10.9.4 Submittal Procedures:** The Contractor shall submit copies of Shop Drawings and Product Data to the A/E in accordance with Submittal Procedure numbers listed below. Reproducible prints shall be sepias or ozalid prints with positive side up. Black and white prints shall be black line on white background.

**6.10.9.4.1 Submittal Procedure No. 1:** Architectural Shop Drawings: One reproducible print and three black and white prints submitted directly to A/E.

**6.10.9.4.2 Submittal Procedure No. 2:** Structural, Mechanical and Electrical Shop Drawings: One reproducible print and three black and white prints submitted directly to A/E.

**6.10.9.4.3 Submittal Procedure No. 3:** Vertical Transportation and Special equipment, i.e., Elevators, Conveyors, etc., Shop Drawings: One reproducible print and five black and white prints submitted directly to A/E.

**6.10.9.4.4 Submittal Procedure No. 4:** When Product Data is submitted in the form of brochures, manufacturers' standard drawings, or catalog cuts not readily available in reproducible form, 7 copies of each shall be submitted directly to the A/E; additional copies shall be furnished only upon request by the A/E.

**6.10.9.5 A/E's Distribution & Stamp:** Following the A/E's review of each Shop Drawing and Product Data submission, the A/E will retain the black and white prints, and return the reviewed reproducible print to the Contractor with the A/E's stamp and signature affixed thereto, annotated as follows:

**6.10.9.5.1 "A Action":** "A Action" means the submission is in general conformance with the design concept. Construction, fabrication and/or manufacture can proceed subject to the provision that the Work shall be in accordance with the requirements of the Construction Documents. Final acceptance of the Work shall be contingent upon such compliance.

**6.10.9.5.2 "B Action":** "B Action" means the submission is in general conformance with the design concept subject to notations by the A/E on the returned Shop Drawings. Construction, fabrication and/or manufacture can proceed subject to the provision that the Work shall be carried out in compliance with all annotations and/or corrections indicated on the returned Shop Drawings and Product Data and in accordance with the requirements of the Construction Documents. Final acceptance of the Work shall be contingent upon such compliance.

**6.10.9.5.3 "C Action":** "C Action" means that the Contractor shall revise and resubmit the Shop Drawings and Product Data in accordance with all annotations and/or corrections indicated therein. Construction, fabrication and/or manufacture cannot proceed. Shop Drawings and Product Data bearing "C Action" stamp shall not be permitted on the Project Site.

**6.10.9.5.4 "D Action":** "D Action" means that the submission is rejected for nonconformance with the design concept and the Contractor shall make a new submittal which shall comply with the requirements of the Construction Documents. Construction, fabrication and/or manufacture cannot proceed. Shop Drawings and Product Data bearing "D Action" stamp shall not be permitted on the Project Site.

**6.10.9.6 Contractor's Distribution:** When transparencies are returned "A Action" or "B Action", the Contractor shall obtain and provide such number of prints to the Subcontractor as may be required by the Subcontractor

for his distribution. The Contractor shall have copies of all "A Action" or "B Action" Shop Drawings and Product Data at the Project Site at all times and shall make them available to the A/E's representatives.

**6.10.9.7 Cost of Submittal and Distribution:** All charges in connection with the delivery of Shop Drawings and Product Data to the A/E shall be paid by the Contractor. All charges in connection with the distribution of Shop Drawings and Product Data to the Contractor shall be paid by the Contractor.

#### **6.10.10 Samples Procedures**

**6.10.10.1 Sample Requirements:** Where possible, all samples required for a particular Specification Section shall be submitted together.

**6.10.10.1.1** Samples shall be submitted from the same source which will supply the actual job. Samples shall be of adequate size to show quality, type, color, range, finish, texture and other specified characteristics.

**6.10.10.1.2** Samples of materials or products which are normally furnished in containers or packages, which bear descriptive labels and/or application or installation instructions, shall be submitted with such labels and/or instructions.

**6.10.10.2 Identification:** All Samples shall be labeled, tagged, or otherwise clearly identified. Labels or tags shall set forth the name of the Project, the project number, buildings for which the Sample is being submitted, A/E, Contractor, Subcontractor, and/or supplier, the name of the manufacturer, fabricator, or processor, the trade designation, grade and quality of the material or product, the date of submittal, and specific identification of each sample and a precise reference to the Specification Article and Sub Article wherein the material, product, or element of the Work is specified. Each label or tag shall have sufficient clear space to permit the application of the approval stamp of the Contractor, and the action stamp of the A/E.

**6.10.10.3 Transmittals:** All samples shall be accompanied by a letter of transmittal from the Contractor setting forth the same identification information as required above under Sub-Article 6.10.4.2. Contractor shall number transmittals consecutively in sequence with the Shop Drawings and Product Data transmittals. Where appropriate, test data and/or manufacturers' certificates shall be referenced in and forwarded with the letter of transmittal. Samples without accompanying certificates or test data will be returned without action.

**6.10.10.4 Submittal Procedure:** The Contractor shall submit the number of samples as indicated below:

**6.10.10.4.1** In the event that a range of variations in texture, graining, color or other characteristics may be anticipated in furnished materials, assemblies, or elements of the Work, a sufficient number of samples of such materials or products shall be submitted to indicate the full range of characteristics which will be present in the materials or products proposed for the Work. Any such materials or products delivered or erected prior to approval of full range samples shall be subject to rejection.

**6.10.10.4.2** All Samples shall be submitted in triplicate to the A/E's home office, or where directed by the A/E, except as otherwise set forth in other Sections of the Contract Documents.

**6.10.10.5 A/E's Distribution & Stamp:** Following the A/E's review of each Sample submission, the A/E will return one set of each submission to the Contractor with the A/E's stamp and signature affixed thereto and annotated in a manner conforming to the convention established in Sub-Article 6.10.9.5.

**6.10.10.6 Contractor's Distribution:** When Samples are returned 'Action A' or 'Action B', the Contractor shall retain such Samples in a suitable place at the Project Site for use by the Contractor, his Subcontractors, the A/E and his authorized representatives to insure that all work is being installed in accordance with these Samples. The remaining Samples will be retained by the A/E.

**6.10.10.7 Cost of Submittal and Distribution:** All charges in connection with the delivery of Samples to the A/E's home office or where directed by A/E (and all charges in connection with the subsequent distribution thereof by the A/E) shall be paid by the Contractor.

## **6.11 Use of Site.**

**6.11.1** The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with any unnecessary or surplus materials or equipment or debris.

**6.11.2** Notwithstanding the designation of construction limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. Trenching, utility work, site development, landscaping and all other work, if required beyond such designated limits, shall be scheduled in such a manner as to cause or occasion a minimum of inconvenience or disturbance or interference with the normal operation of the Owner, abutters, and the public. The Contractor shall obtain the Owner's prior approval for such operations, prosecute such operations expeditiously and restore the affected area and other areas needed for access to their original condition immediately upon completion of such operations, unless otherwise specified herein.

**6.11.3** All operations, including pumping, draining and control of surface and ground water shall be carried out so as to avoid endangering the Work of any adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof.

**6.11.4** The Contractor shall confine operations at the site to work related activities. The Contractor shall not use the site for lodging or as a personal residence.

## **6.12 Cutting and Patching of Work.**

**6.12.1** The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

**6.12.2** The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors or adjacent facilities by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work.

**6.12.3** Structural elements of the Work shall not be cut, patched or otherwise altered or repaired without prior written authorization by the A/E.

**6.12.4** Authorization to proceed with remedial operations for any damaged or defective element or portion of the Work shall not constitute a limitation or a waiver of the A/E's right to require the removal and replacement of any work which fails to fulfill the requirements of the Contract Documents.

## **6.13 Cleaning Up.**

**6.13.1** The Contractor at all times shall keep the Site and related streets free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as his tools, construction equipment, machinery and surplus materials. All waste and rubbish shall be removed from the Site at least weekly and more often if necessary.

**6.13.2** If the Contractor fails to maintain a clean and safe Project and/or fails to clean up at the completion of the Work, the Owner may do so as provided in Sub-Article 5.3 and the cost thereof shall be charged to the Contractor.

**6.14 Communications:** Except where otherwise directed by the A/E or otherwise provided in the Contract Documents, the Contractor shall forward all communications to the Owner through the A/E.

**6.15 Royalties and Patents:** The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular manufacturer or manufacturers is specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the A/E and Owner in writing.

## **6.16 Indemnification.**

**6.16.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, the A/E and its consulting engineers, and their respective successors, agents and employees from and against all claims, damages, liabilities, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any tortious act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation or indemnity which would otherwise exist as to any party or person described in this Sub-Article 6.16.

**6.16.2** In any and all claims against the Owner, the A/E or any of its consultants, and their respective successors, agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 6.16 shall not be limited in any way by any limitation on the amount or type of damages, compensations or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

**6.16.3** The obligations of the Contractor under this Sub-Article 6.16 shall not extend to indemnification of the A/E or other design consultants employed by him, his consultant, agents or employees for damages, claims, losses or expenses arising out of: (a) the preparation or approval by the A/E or his design consultants of maps, drawings, opinions, reports, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by the A/E or his design consultants provided such giving or failure to give is the primary cause of the damage, claim, loss or expense.

**6.16.4** The Contractor agrees to defend, indemnify and save the Owner, and A/E, or any of its consulting engineers, and their respective successors, agents or employees harmless from all costs, liabilities, damages or expenses, including reasonable attorneys' fees, incurred by them, by virtue of any claim or claims whatsoever filed by any Subcontractor, Sub-subcontractor, mechanic, laborer or materialman making claims arising from the Work by, through, or under the Contractor. The Contractor also hereby agrees to defend, indemnify and hold harmless, protect, and defend the Owner, the A/E and its consulting engineers, and their respective successors, agents or employees from and against any liability, claim, judgment, loss, damage, including but not limited to direct, indirect and incidental and consequential damages, attorneys fees, court costs and expense of collection, occasioned in whole or in part by the failure of the Contractor, its Subcontractor, or Sub-subcontractors to comply with any of the terms or provisions of the Contract Documents.

## **6.17 Default.**

**6.17.1** The Contractor shall be in default of the Contract if:

**6.17.1.1** Contractor refuses or fails to prosecute the Work in accordance with the Contract Documents in any material respect;

**6.17.1.2** Contractor fails to make proper payment to Subcontractors or for materials or labor (provided Owner shall have paid to Contractor any payments due from Owner in connection with such materials or labor);

**6.17.1.3** Contractor disregards laws, ordinances, rules, building codes and regulations or orders of any public authority having jurisdiction;

**6.17.1.4** Contractor fails to coordinate its work with other contractors and Subcontractors as required under Article 8 of these General Conditions;

**6.17.1.5** Contractor fails to comply with the scheduling requirements of the Contract;

**6.17.1.6** Contractor fails to promptly replace rejected material or correct rejected workmanship; or

**6.17.1.7** Contractor fails in any material respect to observe any other terms, provisions, conditions, covenants and agreements in the Contract to be observed and performed on the part of the Contractor.

**6.17.2** In the event of any default by Contractor under the Contract, Owner shall have the right to take such measures as it deems necessary to correct the default, at the Contractor's sole cost and expense and to deduct such costs, including but not limited to the State Engineer's and A/E's fees, as it may incur from amount otherwise owing to the Contractor, or to terminate the Contract in accordance with Sub-Article 16.2 of the General Conditions in addition to any and all other remedies that Owner may now or hereafter have. If the amounts owing to the Contractor are insufficient to cover the Owner's cost of corrections, the Contractor shall pay such amount promptly upon demand.

## **Article 7 SUBCONTRACTORS**

### **7.1 Definitions.**

**7.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate contractor or his subcontractors.

**7.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

**7.2 Award of Subcontracts and Other Contracts for Portions of the Work.** The Contractor shall conduct an investigation of each of its proposed Subcontractor's capabilities to assure each is responsible and has the requisite experience, skill, physical plant, and financial strength necessary to perform each Subcontractor's respective Work. The Contractor shall not contract with any Subcontractor that is not responsible or does not have the requisite experience, skill, physical plant, and financial strength necessary to perform its part of the Work.

### **7.3 Subcontractual Relations.**

**7.3.1** The Contractor shall not include any provisions in its Contracts with its Subcontractors which will in any way prejudice the rights of the Owner and the Architect/Engineer under the Contract between the Owner and the Contractor.

**7.3.2** The Subcontract agreement shall require the Subcontractor to consent to any assignment of the Subcontract to the Owner in the event of a default by the Contractor hereunder.

**7.3.3** Nothing in Article 7 shall be construed to create a privity of Contract between the Owner and any Subcontractor.

## **Article 8 WORK BY OWNER OR BY SEPARATE CONTRACTORS**

### **8.1 Owner's Right to Perform Work and to Award Separate Contracts.**

**8.1.1** The Owner reserves the right to perform work related to the Project with his own forces, and to award separate contracts in connection with such work. Such work may include Work assigned to the Contractor under the Contract Documents which Work is not being performed properly or in accordance with the scheduling provisions of the Contract Documents, whether or not the Contractor is in default under Sub-Article 6.17 and whether or not the Owner has terminated the Contract under Sub-Article 16.2. If the Owner elects to exercise this right it will do so upon reasonable notice to the Contractor. There shall be an appropriate adjustment in amounts payable to the Contractor to reflect the Work undertaken by the Owner, which the parties shall confirm by Change Order in accordance with Article 14. If the Contractor claims that delay is involved because of such action by the Owner, he shall make such claim as provided elsewhere in the Contract Documents.

**8.1.2** When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**8.1.3** The Owner will provide for the coordination of the work, of his own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Sub-Article 8.2.

**8.2 Mutual Responsibility.**

**8.2.1** The Contractor shall afford the Owner and separate contractors reasonable opportunity and all required facilities for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate his Work with theirs as required by the Contact Documents.

**8.2.2** If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the A/E any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive his Work, except as to defects which may subsequently become apparent in such work by others.

**8.2.3** Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

**8.2.4** Should the Contractor wrongfully cause damage to the work or property of the Owner or of a separate Contractor, or to other work on the site, the Contractor shall promptly remedy such damage as provided in Sub-Article 12.2.5.

**8.2.5** Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates a litigation proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall participate in the defense of such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court costs which the Owner has incurred.

**8.3 Owner's Right to Clean Up:** If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up the Project, the Site and related streets and walks on a routine basis as required by Sub-Article 6.13, the Owner may clean up and charge the cost thereof to the contractors responsible therefore as the Owner shall determine to be just.

**Article 9  
MISCELLANEOUS PROVISIONS**

**9.1 Governing Law:** The Contract shall be governed by South Dakota Law.

**9.2 Successors and Assigns:** The Owner and the Contractor each binds himself, his successors, assigns and legal representatives to the other party hereto and to the successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any money due or to become due to him hereunder, without the previous written consent of the Owner.

**9.3 Written Notice:** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been given if sent pursuant to Article VII of the Agreement for Construction.

**9.4 Claims for Damages:** Should either party to the Contract suffer injury or damage because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within 14 days after the first observance of such injury or damage.

**9.5 Performance and Labor and Material Payment Bond:** Before commencing the Work, the Contractor shall provide a Performance and Labor and Material Payment Bond in accordance with the requirements of the Instructions to Bidders.

**9.6 Rights and Remedies.**

**9.6.1** The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. This provision relates particularly to the Contractor's obligations under Sub-Article 15.2.2.

**9.6.2** No action or failure to act by the Owner, A/E or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## **9.7 Tests.**

**9.7.1** If the Construction Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the A/E and Owner timely notice of its readiness so the A/E and Owner may observe such inspection, testing or approval. The Contractor shall perform and bear all costs of such inspections, tests and approvals, unless otherwise provided.

**9.7.1.1** Where certain testing and inspection requirements are set forth in the various Sections of the Construction Documents to be performed at the expense of the Owner, the Owner will retain the services of testing laboratories, agencies, or consultants, to perform such tests or inspections and render such services as may be required to verify that the work fulfills the requirements and intent of the Construction Documents. Such services will be performed in a manner consistent with the requirements of the Owner and the various agencies having jurisdiction over the Work and in accordance with reasonable standards of architectural and engineering practice.

**9.7.1.2** The Owner reserves the right to modify the scope of or to re-allocate any of the testing and inspection services specified in the various Sections of the Construction Documents to be performed by a testing laboratory, agency or consultant retained by the Owner in connection with the Work when it can be satisfactorily established that such adjustment in scope is consistent with the intent of the Construction Documents. In the event that the Contractor shall not concur with such modification of scope or re-allocation of such services, he shall immediately notify the A/E and Owner in writing.

**9.7.2** If the A/E determines that any Work requires special inspection, testing, or approval which Sub-Article 9.7.1 does not include, he will upon written authorization from the Owner, order the performance of such services by qualified independent testing laboratories, agencies or consultants as may reasonably be required or instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Sub-Article 9.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Construction Documents, the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, the cost of retesting, and compensation for the A/E's additional services made necessary by such failure; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

**9.7.2.1** If A/E's observation or any inspection or testing undertaken pursuant to Sub-Article 9.7 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply with (1) the requirements of the Construction Documents or, (2) with respect to the Performance of the Work, with laws, ordinances, rules, regulations, building codes or orders of any public authority having jurisdiction, the A/E will have the authority to order inspection and/or testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as he may in his reasonable opinion consider necessary or advisable, and the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, the cost of retesting, and the A/E's additional services, if any are required, made necessary thereby. However, neither the A/E's authority to act under Sub-Article 9.7 nor any decision made by him in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the A/E to the Contractor, any Subcontractor, any of their agents or employees, or any other person performing any of the Work.

**9.7.3** Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by him to the A/E and the Owner.

**9.7.3.1** The Contractor shall obtain and deliver promptly to the Owner any certificates of final inspection of any part of his Work or operating permits for any mechanical or electrical apparatus, such as elevators, escalators, boilers, air compressors, fire alarms, etc., which may be required by law to permit full use and

occupancy of the premises by the Owner. Except as is otherwise provided in Sub-Article 10.1.3, receipt of such permits or certificates by the Owner shall be a condition precedent to Completion of the Work.

**9.7.3.2** Copies of reports issued as a result of services performed at the expense of the Owner pursuant to the provisions of this Article will be distributed to all parties to the Contract.

**9.7.4** If the A/E or owner is to observe the inspections, tests or approvals required by the Contract Documents, they will do so promptly and, where practicable, at the source of supply.

**9.7.5** In connection with testing and inspection services performed at the expense of the Owner, the Contractor shall provide Samples of materials and/or elements of the Work required as test specimens and shall provide incidental labor and facilities at the site reasonably required in support of such services.

**9.7.6** The cost of testing services required solely for the convenience of the Contractor in his scheduling and performance of the Work shall be borne by the Contractor.

**9.7.7** The cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

**9.7.8** If, during the course of the performance of any testing, inspection, control, balancing, adjusting, or similar work by the Contractor or an agent of the Contractor, it is the opinion of the A/E that the Contractor or said agent has failed to perform such work in a satisfactory manner, the Contractor shall, at his own expense, retain the services of a service organization which is satisfactory to the A/E for the performance of such work.

## **9.8 Litigation.**

**9.8.1** Unless otherwise specifically provided in this Agreement, all claims, counter-claims, disputes or other matters in question between the Owner and the Contractor arising out of, or relating to this Agreement, or the breach thereof, will be decided in a circuit court of competent jurisdiction within the State of South Dakota.

**9.8.2** The Contractor shall carry on the Work and maintain its progress during any dispute or litigation proceedings, and the Owner shall continue to make payments to the Contractor to the extent required by the Contract Documents and South Dakota Law.

## **Article 10 TIME**

### **10.1 Definitions.**

**10.1.1** The Contract Time is the period of time allotted in the Construction Contract for Substantial Completion of the Work as defined in Sub-Article 10.1.3, including authorized adjustments thereto.

**10.1.2** The date of commencement of the Work is the date established in the Notice to Proceed.

**10.1.3** The date of Substantial Completion of the Work is the date certified by the A/E when construction is sufficiently completed in accordance with the Contract Documents so that the Owner can occupy and utilize the Project for the use for which it is intended, and such Work is fully completed in accordance with the Contract Documents except for minor items, adjustments or corrections which have no material effect upon the utilization, function or intrinsic values of the entire Project, including all of its mechanical, electrical and other systems and facilities.

**10.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

### **10.2 Progress and Completion.**

**10.2.1** All time limits stated in the Contract Documents, including the Construction Completion Schedule, are of the essence of the Contract.

**10.2.2** The Contractor shall begin the Work on the date of commencement as defined in Sub-Article 10.1.2. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### **10.3 Delays and Extensions of Time.**

**10.3.1** If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner or the A/E, or by any employee of either, or by changes in the Construction Completion Schedule required by the Owner, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes not caused by the labor practices of the Contractor or any Subcontractor in contravention of applicable labor practices, fire, unusual delay in transportation, severe and unusual weather conditions not reasonably anticipatable, unavoidable casualties, or any other causes beyond the Contractor's control and not occurring due to the fault or neglect of the Contractor, any Subcontractor or any other person for whose acts the Contractor is responsible, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner shall determine, or the Owner may elect to require the Contractor to accelerate the Work, in which case the Contract Sum shall be increased by a Change Order in the amount of the direct cost to the Contractor (exclusive of overhead and profit of necessary over-time labor).

**10.3.2** Any claim for extension of time shall be made in writing to the Owner with a copy to A/E not more than 10 days after the commencement of the delay; otherwise it shall be waived. In the case of continuing delay only one claim is necessary. The Contractor shall provide an estimate of the probable effect on such delay on the progress of the Work.

**10.3.2.1** Such claims shall set forth in detail the nature of the circumstances which form the basis for each such claim, the date upon which each such alleged cause of delay began, or began to affect the timely prosecution of the Work, and ended, or ceased to have an adverse effect upon the timely prosecution of the Work, and the number of days extension of time requested as a consequence of each such alleged cause of delay. The Contractor shall provide such supporting documentation as the Owner may require, including, where appropriate, a revised Construction Completion Schedule indicating all of the activities affected by the circumstances which form the basis for the claim.

**10.3.2.2** The Contractor shall not be entitled to a separate extension of time as a consequence of each one of a number of causes of delay which may have a concurrent or interrelated effect on the progress of the Work.

**10.3.2.3** The Owner shall have the right to defer his decision or decisions with reference to any claim or claims for an extension of time made pursuant to the provisions of this Article until the facts or circumstances which form the basis for such claim or claims may be fully assessed to the Owner's reasonable satisfaction.

**10.3.2.4** Notwithstanding the provisions of Sub-Article 10.3.2, claims for an extension of time arising out of authorized changes in the Work shall be made in writing prior to or concurrent with the submission of the Contractor's proposal pursuant to such change. No extension of time arising out of changes in the Work will be granted subsequent to the date upon which the Contractor is authorized to proceed with such change or changes in the Work unless specific provisions governing a subsequent determination of an extension of time have been incorporated in such authorization to proceed with such change or changes in the Work. No claim for damages or separate compensation for delay arising from such change in the Work shall be recognized or be deemed valid, it being understood that any additional cost to the Contractor arising from such change shall be included in the amended Contract Sum set forth in such Change Order.

**10.3.2.5** Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where work is performed. Determinations of the extent of delay attributable to unusual weather phenomena shall be made by comparing the weather for the contract period involved with the average of the preceding five (5) year climactic range during the same period on the calendar. National Oceanic and Atmospheric Administration National Weather Service statistics for the locality or area where the work is performed shall be used to determine the five (5) year average weather conditions. Time extensions for weather delays do not entitle the Contractor to "extended overhead" recovery.

**10.3.3** If no agreement is made stating the dates upon which interpretations as provided in Sub-Article 4.13 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until 15 days after written request is made for them, and not then unless such claim is reasonable.

**10.3.4** Should the contractor fail to substantially complete the work within the time agreed upon in the contract documents, or within such extra time as may have been allowed by increases in the contract or by formally approved extensions granted by the owner, the contractor and the contractor's surety shall be liable for and shall pay the owner the sums stipulated in the agreement for construction as liquidated damages for each calendar day of delay until the work is substantially complete. This sum is not a penalty but is liquidated damages due the owner from the contractor by reason of inconvenience to the public, added cost of engineering and supervision, and other items which have caused an expenditure of public funds resulting from the contractor's failure to complete the work within the time specified in the contract. In addition to liquidated damages, if any delay on the part of the contractor, any subcontractor or sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable results in any claim by third parties against the owner or the A/E arising out of such delay, the contractor shall pay, satisfy, and discharge all losses, damages and expenses arising out of such claims, including attorneys' fees, and shall indemnify and hold harmless the owner and the A/E and their agents and employees from and against all costs, fees, losses, damages, and expenses arising out of such claims enforced against the owner or the A/E.

**10.3.5** No extension of time will be granted to the Contractor for any delay other than those described in Sub-Article 10.3.1.

**10.3.5.1** Should the Contractor fail, refuse or neglect to supply a sufficiency of workmen or to deliver the materials with such promptness as to prevent delay in the progress of the Work, or fail in any material respect diligently to commence and prosecute the Work and to proceed in accordance with the approved construction schedule, or if the different parts thereof are not commenced, prosecuted, finished, delivered or installed in such manner as will insure substantial completion in accordance with the approved Construction Completion Schedule, or if the Contractor shall fail in the performance of any of his obligations under this Contract in any material respect, the Owner shall have the right to direct the Contractor, upon 3 days notice at the Contractor's cost and expense, to furnish such additional labor and to expedite deliveries of materials (or the Owner may furnish such labor and expedite such deliveries at the cost of the Contractor), which labor or expediting shall, in the Owner's opinion, be sufficient to speed up and complete the Work in accordance with the Construction Completion Schedule.

**10.3.5.2** If such additional labor shall not be available, the Owner shall have the right to direct the Contractor at the latter's own cost and expense, to work overtime to such an extent as will be sufficient, in the Owner's opinion, to speed up and complete the Work as herein provided.

**10.3.6** The Contractor's right to make a claim or claims for an extension of time, as provided in Sub-Article 10.3.1, shall not preclude the Contractor's right to make a claim for delay damages arising out of the Owner's significant interference, by action or inaction, with the Contractor's Work.

#### **10.4 Beneficial Occupancy.**

**10.4.1** The Owner shall have the privilege of Beneficial Occupancy and the use and benefit of designated areas, subdivisions or portions of the Project prior to completion and acceptance of the entire Project, provided that such Beneficial Occupancy shall not unduly interfere with the Contractor's operations nor unduly delay him in completing the entire Work. Such occupancy and use shall be further subject to the provisions set forth herein and the provisions of SDCL § 5-18B-13.

**10.4.2** In the event that the Owner desires to exercise the privilege of Beneficial Occupancy, he shall give reasonable notice to the A/E and the Contractor. If the A/E determines that such proposed occupancy is reasonable and proper, the Contractor shall cooperate with the Owner in providing services and facilities reasonably required for the health, safety and comfort of the occupants and other parties lawfully present and/or entering or leaving the premises. Mutually acceptable arrangements shall be made between the Owner and the Contractor with regard to procedures, terms and conditions governing the operation and maintenance of such services and facilities as may be utilized for the benefit of the Owner. The Owner will assume proportionate and reasonable responsibility for operation of systems, equipment and/or utilities required to provide such services, in part or in total, including proportionate and reasonable expenses of operation

incidental thereto. No such Beneficial Occupancy shall accelerate the commencement of any warranty period on any system but only on the particular components being utilized.

**10.4.3** The Owner's Beneficial Occupancy or use of such designated areas, subdivisions, or portion of the Work shall not constitute acceptance of systems, materials, or elements of the Work which are not in accordance with the requirements of the Contract Documents; nor relieve the Contractor from his obligations to complete the Work; nor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, systems, materials, equipment, or elements of the Work; nor from other unfulfilled obligations or responsibilities of the Contractor under the Contract. If, however, damage results solely from any act of the Owner, the Owner will assume its proportionate responsibility for such damage.

## **Article 11 PAYMENTS AND COMPLETION**

**11.1 Contract Sum:** The Contract Sum is stated in the Agreement for Construction.

**11.2 Schedule of Values:** Before the first Application for Payment, the Contractor shall submit to the Owner and A/E a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner and A/E may require. The format and number of copies of such Applications for Payment shall be as directed by the Owner and the A/E. This schedule, unless objected to by the Owner, shall be used as a basis for the Contractor's Applications for Payment.

**11.3 Monthly Application for Payment.**

**11.3.1** No later than the 5th day of each month the Contractor shall submit to the A/E his monthly itemized application for Payment. The Contractor shall not submit more than one pay application per month. The monthly Application for Payment shall be on AIA Document G702 and supported by such data substantiating the Contractor's right to partial payment as the Owner or A/E may require; including but not limited to receipts, releases, and waivers of liens.

**11.3.1.1** In applying for payment, the Contractor shall submit his monthly payment estimate based upon the approved schedule of work for the project, itemized in such form and supported by such evidence as will show his right to the payment claimed. Claims made on account of materials delivered and suitably stored at the site, but not incorporated in the work, shall be conditioned upon submission by the Contractor of Bills of Sale or such other procedure as will establish the Owner's title to such material or otherwise adequately protect the Owner's interest.

**11.3.1.2** If the Contractor chooses to apply for payment for materials which cannot be incorporated into the Work, and cannot be stored on the site, he may do so provided the following conditions are met:

Unless otherwise agreed to by the Owner, the material shall be stored in a bonded or insured commercial warehouse within a geographic radius of 15 miles of the construction site, with the Owner being listed on the bond or insurance certificate as the sole beneficiary in the case of loss or damage to the stored materials. The Contractor shall be responsible for all storage, insurance or transportation costs associated with the materials. Conditions of insurance will apply to applicable portions of Sub-Article 11.3.1.2. Contractor shall provide the Owner with bills of sale or such other documents as will establish the ownership of the materials.

**11.3.2** The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

**11.3.3** Monthly applications received after the 5th day of the month will be treated as if submitted on the 5th day of the following month.

**11.4 Recommendation for Payment.**

**11.4.1** By the 15th of each month, the A/E will review the Contractor's Monthly Application for Payment and make his certification to the Owner with a copy to the Contractor, for such amount as the A/E believes is properly due, or notify the Contractor in writing his reasons for withholding a Certificate as provided in Sub-Article 11.6.1.

**11.4.2** The issuance of a Certification for Payment will constitute a representation by the A/E to the Owner, based on his observations at the site as provided in Sub-Article 4.3 and the data comprising the Monthly Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the result of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that the A/E believes that the Contractor is entitled to payment in the amount recommended. However, by issuing a Certification for Payment, the A/E shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum. The Owner will not be bound by the amount stated in the A/E's Certification for Payment in making determinations of amounts properly payable to the Contractor.

## **11.5 Progress Payments.**

**11.5.1** Based upon his review of the Monthly Application for Payment, and the A/E's Certification, the Owner shall make progress payments to the Contractor in such amounts as the Owner reasonably determines are properly due less the aggregate of previous payments in each case. Payment of amounts determined to be due by the Owner under each Monthly Application for Payment shall be due to the Contractor 20 days after the 15th of each month, unless the A/E's certification was delayed by following the procedures of Article 11.6.1. In such case, payment shall be 25 days after the 15<sup>th</sup> of each month. The Owner shall at all times retain an amount sufficient to complete the Work pursuant to SDCL §§ 5-18B-11 and 5-18B-13. If the Owner retains any portion of a certified progress payment that is properly due and undisputed beyond the time for payment specified herein and for reasons other than those required by statute, the Owner shall owe and pay the Contractor four percent (4%) interest compounded annually on the retained amount starting from the date payment first becomes due under this article.

**11.5.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled reflecting any amounts actually withheld, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall not withhold retainage from its Subcontractors unless retainage is withheld from the Contractor by the Owner. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner.

**11.5.3** The Owner shall, on request, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such Subcontractor.

**11.5.4** Neither the Owner nor the A/E shall have any obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

**11.5.5** No Certification for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute acceptance or approval of any Work not in accordance with the Contract Documents.

## **11.6 Payments Withheld.**

**11.6.1** The A/E may decline to certify the full payment of the amount requested by the Contractor in his monthly application to the extent necessary to reasonably protect the Owner. If the A/E is unable to certify payment in the amount of the Application, he will, within 10 days after receipt of the monthly application, notify the Contractor in writing the reasons he cannot make such a certification. If the Contractor and the A/E cannot agree on a revised amount within five days of A/E sending written notice, the A/E will promptly issue a Certification for Payment for the amount for which he is able to certify to the Owner pursuant to Sub-Article 11.4.2. The A/E may also decline to certify payment because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Certification

for Payment previously issued, and the Owner may withhold payment of all or any part of an Application for Payment, to such extent as may be necessary to protect the Owner from loss because of:

**11.6.1.1** Defective work not remedied;

**11.6.1.2** Third party claims filed or reasonable evidence indicating probable filing of such claims;

**11.6.1.3** Failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment;

**11.6.1.4** Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

**11.6.1.5** Damage to the Owner or another contractor;

**11.6.1.6** Reasonable evidence that the Work will not be completed within the Contract Time;

**11.6.1.7** Failure to carry out the Work in accordance with the Contract Documents;

**11.6.1.8** A lien or attachment is filed and such lien is not discharged within 5 days of demand from the Owner;

**11.6.1.9** Failure of the Contractor and/or of the Mechanical or Electrical Subcontractors to comply with the mandatory requirements for maintaining "up-to-date" Record Drawings;

**11.6.1.10** Incomplete or otherwise inadequate Application for Payment; or

**11.6.1.11** Reasonable evidence that the Contractor is in material breach of his obligations under the Contract.

**11.6.2** When the above grounds in Sub Article 11.6.1 are removed, payment shall be made for amounts withheld because of them.

## **11.7 Substantial Completion.**

**11.7.1** When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is Substantially Complete as defined in Sub Article 10.1.3 the Contractor shall prepare for submission to the A/E and Owner a list of items to be completed or corrected. The failure to include any item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the A/E and Owner on the basis of an inspection determines that the Work or designated portion thereof is Substantially Complete, the A/E will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities and damage to the Work, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties and Guarantees required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

**11.7.2** Upon Substantial Completion of the Work or designated portion thereof and upon application by the Contractor and certification by the A/E, the Owner shall make payment, reflecting adjustment for defective or incomplete work, if any, for such Work or portion thereof, as provided in the Contract Documents. Double the amount necessary to complete the Work shall be retained by the Owner pursuant to SDCL § 5-18B-13.

## **11.8 Final Completion and Final Payment.**

**11.8.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the A/E and Owner will promptly make such inspection and, when they find the Work acceptable under the Contract Documents and the Contract fully performed, the A/E will promptly issue a final Certificate for payment stating that to the best of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said final Certificate, is due and payable. The A/E's Final Certificate for Payment will constitute a further representation

that the conditions precedent to the Contractor's being entitled to final payment as set forth in Sub-Article 11.8.2 have been fulfilled.

**11.8.2** The final payment shall not become due until the Contractor submits to the A/E and Owner (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or his property might in any way be responsible, have been paid or otherwise satisfied, (2) consent of surety to final payment, (3) if required by the Owner, other data establishing payment or satisfaction of all such obligation, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Owner, (4) an Unemployment Compensation Contribution Certificate from the South Dakota Department of Labor, and (5) a full and complete release of the Owner from all liability under the Contract and otherwise, except to the extent provided in Sub-Article 11.8.4. If the Contractor fails to furnish such releases or waivers of liens as the Owner reasonably requires to determine that there are no outstanding liens, the Owner may require that Contractor, as a condition of final payment to furnish a bond satisfactory to the Owner to indemnify the Owner against any such liens. Cost of such bond shall be borne by the Contractor. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**11.8.3** Owner shall make final payment of all sums due to the Contractor 30 days after the completion and acceptance of the project by the Owner and Contractor's compliance with Article 11.8.2 above. If the Owner fails to make final payment to the Contractor within the time specified herein, the Owner shall pay the Contractor interest at the rate of eight percent (8%) compounded annually on the amount retained starting from the date final payment first becomes due.

**11.8.4** The acceptance of final payment by the Contractor shall constitute a complete and unconditional waiver and release of any and all claims by the Contractor of whatever nature, and regardless whether they are then known or unknown, and a complete and unconditional release of the Owner and every person for whom the Owner is responsible for any and all matters related to the Contract or otherwise, except those claims which have been made in writing and identified by the Contractor as not having been settled at that time.

## **Article 12 PROTECTION OF PERSONS AND PROPERTY**

**12.1 Safety Precautions and Programs:** The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, and for safeguarding all adjacent properties and facilities.

**12.2 Safety of Persons and Property.**

**12.2.1** The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

**12.2.1.1** All employees on the Work and all other persons who may be affected thereby;

**12.2.1.2** All the Work and all materials and equipment to be incorporated therein, whether in storage or off the site, under the care, custody or control of the Contractor and any of his Subcontractors or Sub-subcontractors; and

**12.2.1.3** Other property at the site or adjacent thereto, including but not limited to, work of the Owner or of separate contractors, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**12.2.2** The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss, and shall indemnify the Owner and the A/E and save them harmless against all claims, penalties, actions and proceedings relating thereto or the Contractor's failure so to comply.

**12.2.3** The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

**12.2.4** When the use or storage of any hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

**12.2.5** The Contractor shall promptly remedy all damage or loss to any property referred to in Sub-Articles 12.2.1.2 and 12.2.1.3 caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible under Sub-Articles 12.2.1.2 and 12.2.1.3, except damage or loss attributable to the acts or omissions of the Owner or A/E or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to his obligations under Sub-Article 6.16.

**12.2.6** The Contractor shall designate a responsible member of his organization at the Site whose duty shall be the prevention of accidents. This person shall be qualified as a safety supervisor by experience, training, or education and shall have the responsibility to insure and enforce safety requirements on behalf of the Contractor and shall be designated by the Contractor in writing to the Owner and the A/E.

**12.2.7** The Contractor shall issue weekly safety reports to the Owner and the A/E attesting to conditions on the Site relating to safety and to actions taken.

**12.2.8** The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

**12.2.9** The structure of the Project is designed to support the loads of the finished building. No provision is included for stresses or loads imposed by construction operations. If the Contractor desires to place such loads in excess of the design load shown on drawings, he shall submit drawings and calculations prepared by, and bearing the seal of a professional structural engineer of the proposed method for supporting such loads for the A/E's review and approval. No loading of any kind in excess of design loads shall be placed on any part of the building structure prior to the A/E's approval of submitted drawings and calculations. The costs of the A/E's review shall be borne by the Contractor.

**12.2.10** The Contractor shall prepare a written report setting forth the circumstances and details related to any accident or occurrences involving death, bodily injury, sickness, disease, personal injury, and/or loss or injury to or destruction of tangible property. Such reports shall be forwarded promptly to the insurance carriers, the A/E and the Owner.

**12.3 Emergencies:** In any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent threatened damage, injury or loss and shall as promptly as conditions permit notify the insurance carriers, Owner, and A/E of the nature of the emergency and circumstances related thereto. Immediately thereafter, the Contractor shall prepare a written report setting forth in detail the action taken and describing in detail all circumstance and conditions which are related to such action.

### **Article 13 INSURANCE**

**13.1** The Contractor shall not commence work under this contract until he has obtained all the insurance required under this article and such insurance has been approved by the Owner. Each contractor shall maintain and shall ensure that each subcontractor maintain for the life of the contract:

**13.1.1 Worker's Compensation Insurance** as required by South Dakota Law and Employers Liability Insurance with a limit of not less than \$1,000,000 each accident.

**13.1.2 Commercial General Liability Insurance** or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

**13.1.3 Business Automobile Liability Insurance** or equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

**13.1.4 Builder's Risk Insurance** in the full amount of this contract, upon any building, structure, equipment and appliance in the process of construction or installation under state contract and upon all materials on site, until such time as the building, structure, equipment and appliances have been finally accepted by the Owner and the contract

completed. This insurance shall include the interest of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Work and shall insure against loss by physical damage including, without duplication of coverage, fire, flood, extended coverage, theft, vandalism, malicious mischief, and collapse.

### **13.2 Certificates of Insurance.**

**13.2.1** Certificates of the above insurance shall be filed with the Owner and shall be subject to the Owner's approval for adequacy of protection. Each respective contractor shall provide the certificates for the insurance required herein.

**13.2.2** The Owner's approval or acceptance of such certificates of insurance shall in no way release or relieve the respective contractor from any responsibility, liability or obligation devolving upon him.

**13.2.3** All insurance policies and certificates shall be issued only by companies authorized to do business in the State of South Dakota and acceptable to the Owner. It shall be the Contractor's responsibility to keep the respective insurance policies and coverages current and in force for the life of the contract.

## **Article 14 CHANGES IN THE WORK**

**14.1 Change Orders:** A Change Order is a written order to the Contractor signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

**14.2** The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents. No later than the 5<sup>th</sup> day of each month, the A/E will process a written change order to include all outstanding RFPs.

**14.3** The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

**14.3.1** By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. Such lump sum proposals shall be supported by a completely detailed analysis of the proposed change subdivided into the Work of the Contractor and/or the Work of each Subcontractor and/or Sub-subcontractors involved in the proposed change, as applicable, with each such subdivision further broken down into the following elements:

**14.3.1.1** Number of man-hours of labor to be performed by each trade, craft or classification of employee involved in the proposed change.

**14.3.1.2** The hourly rate for each such trade, craft or classification of employee, including the appropriate wage supplement for social security, old age and unemployment contributions, and such other employee benefits as may be established by statute or by written agreement negotiated by and between organizations representing such crafts or trades and representatives of their employers.

**14.3.1.3** The estimated quantity of each item or element of material and/or equipment entering into the proposed change.

**14.3.1.4** The unit cost of each such item or element of material and/or equipment.

**14.3.1.5** Rental of items or units of construction plant and equipment with a schedule of the period or periods of use of such item or unit in connection with the proposed change.

**14.3.1.6** Rental terms and rates for each such item or unit of construction plant and equipment. Rental for equipment shall be based on the following:

**14.3.1.6.1** Hourly rental rates shall be based on 80% of the applicable rates for equipment listed in the 'Green Book', latest edition, (published by the Associated Equipment Distributors, 615 West 22nd Street, Oakbrook, Illinois, 60523).

**14.3.1.6.2** Hourly rental rates for equipment not listed in the 'Green Book' shall be based on 100% of the applicable rates for equipment listed in the 'Blue Book', latest edition (published by Dataquest, 1290 Ridder Park Drive, San Jose, California, 95131).

**14.3.1.6.3** Hourly rental rates determined from the 'Green Book' or 'Blue Book' includes all items of cost and expense to the Contractor, including gas, oil, maintenance, repairs, insurance, and transportation to and from construction site.

**14.3.1.7** Power and/or other utilities entering into the proposed change.

**14.3.1.8** Rates and terms applicable to such power and/or other utilities.

**14.3.1.9** Additional premiums, if applicable, for the extension of insurance and bond coverages as required herein to the proposed change.

**14.3.1.10** Applicable federal, state and local taxes.

**14.3.1.11** Indirect Cost and Fee computed as a percentage override applied to net cost in accordance with the provisions of this Article.

**14.3.2** By unit prices stated in the Contract Documents or subsequently agreed upon;

**14.3.3** By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;

**14.3.4** By the method provided in Sub-Article 14.3.12.

**14.3.5** The Contractor shall require that the itemized analysis of each portion of the proposed change to be performed by a Subcontractor and/or Sub-subcontractor be prepared by each such Subcontractor and/or Sub-subcontractor in accordance with the format established herein. Copies of all such itemized analysis shall be appended to the Contractor's itemized analysis of the proposed change in the Work.

**14.3.6** For purposes of calculating Indirect Cost and Fee in relation to Change Orders, the net cost of a proposed change in the Work shall include, and unless otherwise agreed in writing prior to the performance of the proposed change, shall be limited to the fair and reasonable estimated cost of the total of all of the individual items, elements, or components involved in proposed change in the Work (including adds and deducts) as set forth in Sub-Articles 14.3.1.1 through 14.3.1.11.

**14.3.7** For each portion of a proposed net additive change in the Work to be performed directly by the Contractor, the cost to Owner shall include an increment for the Indirect Cost and Fee of the Contractor associated with such portion of proposed change of 8% of the net cost of the Work.

**14.3.8** For each portion of a proposed net additive change in the Work to be performed directly by a Subcontractor, in addition to an increment or increments for Subcontractor's Indirect Cost and profit associated therewith of 8%, the cost to the Owner shall include a supplementary increment or increments for Contractor's Indirect Cost and Fee associated therewith of 6% of the net cost of the Work.

**14.3.9** In computing Indirect Cost and Fee, the percentage for Indirect Cost and Fee shall be taken on basic wage only. No percentage override shall be taken on Social Security, Old Age and Unemployment contributions, contributions to Industry funds, education, and Training Funds and/or similar wage supplements, contributions or benefits.

**14.3.10** Items, elements or components of changes in the Work or proposed changes which shall be classified as Indirect Cost and excluded from net cost shall include, but shall not necessarily be limited to:

**14.3.10.1** All classifications of administrative, supervisory, and clerical personnel not engaged manually in the performance of the Work, including timekeepers, clerks, watchmen, and security personnel.

**14.3.10.2** Miscellaneous expense, job burden, and/or other generalized categories of cost or expense.

**14.3.10.3** Use of small tools.

**14.3.10.4** Insurance other than insurance coverage required herein.

**14.3.11** In changes in the Work involving both additions to and deductions in the Work, or any portion or element thereof, or the relocation or rearrangement of items, portions or elements thereof, or the substitution of any items, portions or elements thereof, such additions and deductions shall be balanced and the Contractor's Fee computed on the same basis for deductions as well as additions. If at the request of the A/E and/or the Owner a number of unrelated changes in the Work are set forth individually, summarized and totaled in a single Change Order for reasons of administrative convenience, the amount or amounts of individual deductive changes in the Work set forth therein shall, in any event, be balanced against the amount or amounts of individual additive changes in computing the Contractor's Fee for the purpose of adding and deducting.

**14.3.12** If none of the methods set forth in Sub-Articles 14.3.1, .3.2 or .3.3 is agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Owner on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for the Contractor's Fee. In such case, and also under Sub-Articles 14.3.3 and .3.4 above, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order, at the end of each day, and will submit to the Owner or his designated representative: (a) daily time slips showing the name of each workman employed on such work, the number of hours which he is employed thereon, the character of his duties, and the wages and benefits to be paid to him and on his behalf, and (b) a memorandum of the equipment used in the performance of such Work, together with the rental claimed therefor. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the basis of amounts reasonably estimated by the Owner. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract sum will be the amount of the actual net cost as confirmed by the A/E and agreed to by the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance or credit for the Contractor's Fee shall be figured on the basis of the net increase, or decrease, if any, with respect to that change.

#### **14.4 Differing Site Conditions**

**14.4.1** The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the A/E of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

**14.4.2** The A/E shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contract Sum shall be adjusted as provided in this Article, provided that the work has been ordered in writing by Owner and A/E as provided in Sub-Article 14.1 above. There shall be included in the adjustment to the Contract Sum under the preceding sentence a reasonable allowance for any extraordinary increase in Indirect Cost borne by the Contractor because of such additional work.

#### **14.5 Claims for Additional Cost.**

**14.5.1** If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the A/E and Owner a written notice thereof within 10 days after the occurrence of the event giving rise to such claim except where claim is made in connection with deviations in Shop Drawing or Sample submittals, in which case claim shall be made in writing to the A/E concurrently with such submittals. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Sub-

Article 12.3. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

**14.5.2** If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Sub-Article 4.13, (2) any order by the Owner to stop the Work pursuant to Sub-Article 5.2 where the Contractor was not at fault, (3) any written order for a minor change in the Work issued pursuant to Sub-Article 14.6, or (4) any deviation in Shop Drawing or Sample submittals from the requirements of the Contract Documents, the Contractor shall make such claim as provided in Sub-Article 14.5.1.

**14.6 Minor Changes in the Work:** The A/E will have authority to order minor changes in the Work not involving an adjustment in the Contact Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order, and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

## **Article 15 UNCOVERING AND CORRECTION OF WORK**

### **15.1 Uncovering of Work.**

**15.1.1** If any portion of the Work should be covered contrary to the request of the A/E or the Owner, or the requirements specifically expressed in the Contract Documents, it must, if required in writing by the A/E or the Owner, be uncovered for his observation and shall be replaced at the Contractor's expense.

**15.1.2** If any other portion of the Work has been covered which the A/E or the Owner has not specifically required to observe prior to being covered, the A/E or the Owner may request to see such Work and it shall be uncovered by the Contractor. If such work be found in accordance with the Construction Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such work be found not in accordance with the Construction Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the Owner or a separate contractor as provided in Article 8, in which event the Owner shall be responsible for the payment of such costs.

### **15.2 Correction of Work.**

**15.2.1** The Contractor shall promptly correct all Work rejected by the A/E as defective or as failing to conform to the Construction Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the A/E's additional services and the Office of the State Engineer fees made necessary thereby.

**15.2.2** If, at any time after the Owner's acceptance of the fully completed Project any of the Work is found not to have been provided in conformance with the Construction Documents, or, if within one year after such acceptance any of the Work is otherwise found to be faulty or defective, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so. The Contractor shall also repair or replace any part of the Work which is damaged by the defective condition or the remedial Work. This obligation shall survive termination of the Contract, subject to the terms of any applicable statute of limitations. The Owner shall give such notice promptly after discovery of the condition.

**15.2.3** The Contractor shall remove from the Site all portions of the Work which are defective or non-conforming and which have not been corrected under Sub-Articles 6.4.1, 15.2.1 and 15.2.2, unless removal is waived by the Owner.

**15.2.4** If the Contractor fails to correct defective or non-conforming Work as provided in Sub-Articles 6.4.1, 15.2.1 and 15.2.2, the Owner may correct it in accordance with Sub-Article 5.3.

**15.2.5** If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the A/E, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within 10 days thereafter, the Owner may upon 10 additional days written notice sell such Work at auction or a private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the A/E's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change

Order shall be issued. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand.

**15.2.6** The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction removal.

**15.2.7** Nothing contained in this Article shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Sub-Article 6.4 hereof. The establishment of any time period prescribed by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor liability with respect to his obligations other than specifically to correct the Work.

**15.3 Acceptance of Defective or Non-Conforming Work:** If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **Article 16 TERMINATION OF THE CONTRACT**

**16.1 Termination by the Contractor:** If the Work is stopped for a period of 90 days under an order of any court or any public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon 7 additional days written notice to the Owner and the A/E, terminate the Contract and recover from the Owner payment for all Work executed to the termination date, together with reasonable demobilization costs. The Contractor shall have no other right to terminate the Contract for any reason.

**16.2 Termination by the Owner.**

**16.2.1** If the Contractor is in default under the Contract Documents, the Owner may, without prejudice to any other right or remedy and upon written notice to the Contractor, terminate the contract.

Prior to termination of the Contract, the Owner shall give the Contractor and his surety 10 calendar days written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the Owner within said 10 days, the Owner may rescind its notice of termination. If not rectified, the termination for cause shall become effective at the end of the 10 day notice period. In the alternative, the Owner may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and its surety that the causes of termination will be remedied in a time and manner which the Owner finds acceptable. If at any time more than 10 days after the notice of termination, the Owner determines that the Contractor or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

Notice of termination, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in South Dakota or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within 3 days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

Upon termination of the Contract, the Owner shall take possession of the premises and of all materials, tools, appliances, equipment, and other facilities on the Project, wherever stored, and may finish the Work by whatever method he may deem expedient. The Contractor shall assign Subcontracts to the Owner or to a designated substitute contractor promptly upon request. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished and the Owner has determined its damages owing to the Contractor's default.

**16.2.2** If the costs of finishing the Work, including compensation for the A/E's and Office of the State Engineer's additional services made necessary by the Contractor's default, and all other damages suffered by the Owner on account

of the Contractor's default, exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner, and this obligation for payment shall survive the termination of the Contract. If the costs of finishing the Work are less than the unpaid portion of the contract Sum, the Owner shall pay the unpaid balance of any amount properly owing to the Contractor for all Work executed to the date of termination, less actual damages. The Owner will not be obligated to pay any further amount on account of Direct Cost, Indirect Cost or Fee.

**16.2.3** If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner.

**16.3 Termination for Convenience.**

**16.3.1** The Owner may terminate this Contract at any time without cause, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease Work and remove from the project site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

- (1) All amounts then otherwise due under the terms of this Contract,
- (2) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,
- (3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature.

**16.3.2** In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.

# TECHNICAL SPECIFICATIONS

## **SPECIFICATIONS**

Standard Specifications for Roads and Bridges, 2015 Edition and/or Special Provisions as included in the Proposal.

## **PLAN INDEX**

**PLAN INDEX**

Plan Sheets

1-5