

March 26, 2024

RE: REQUEST FOR STATEMENT OF INTEREST  
CAMPUS, WATER MAIN REPLACEMENT  
BLACK HILLS STATE UNIVERSITY  
SPEARFISH, SOUTH DAKOTA  
OSE# R0824--06X/ARPA

The State is looking for firms interested in providing professional services for the project referenced above. The project scope will involve the design, bid and construction for Campus, Water Main Replacement at the Black Hills State University in Spearfish, South Dakota, OSE # R0824--06X/ARPA.

The Black Hills State University (BHSU) campus is located within the city of Spearfish, South Dakota. The existing main water line is original from the 1940s and needs replaced due to significant breaks that are occurring. This project is American Rescue Plan Act (ARPA) funded. This funding has a requirement to have all contracts, including design and construction, executed by December 31, 2024. Due to this timeline, great emphasis during scoring will be on availability to complete the design in an expedited manner.

The construction budget for the project is \$1,650,000, but be advised that this number is subject to change. Construction is anticipated to start in August 2024 and be completed in December 2024.

Firms desiring to be considered for providing professional services for this project should send a statement of interest that outlines qualifications and experience for this project. Statements of Interest should at a minimum include the following:

1. Specialized expertise, capabilities, and technical competence as demonstrated by the team's capabilities, proposed approach and methodology to meet the project requirements. (20%)
2. Resources available to perform the work, including any specialized services, within the specified time limits for the project. Include resumes of all personnel, including sub-consultants who will be assigned to this project for the entire duration. (40%)
3. Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration. (10%)
4. Availability to project locale. (5%)
5. Familiarity with project locale. (5%)
6. Proposed project management techniques. (10%)
7. Ability and project history in handling special project constraints. (10%)

A technical review committee will select the firm based on the criteria shown. The committee respectfully requests that statements of interest be limited to 25 pages or less. This is not a requirement; merely a request.

Copies of the statement of interest must be submitted by **3:00 pm MT on Thursday, April 25, 2024**. Please send electronic copies (as an e-mail attachment) as quantified to each of the following:

Camilla Widvey, P.E., Project Engineer  
Office of the State Engineer  
Joe Foss Building  
523 E. Capitol Avenue  
Pierre, SD 57501-3182  
Phone: 605-910-4799  
E-mail: [cami.widvey@state.sd.us](mailto:cami.widvey@state.sd.us)

Randy Culver  
Director Facilities Services  
Black Hills State University  
1200 University Street  
Spearfish, SD 57799  
Phone: 605-642-6157  
E-mail: [randy.culver@bhsu.edu](mailto:randy.culver@bhsu.edu)

Firms wanting additional site/project information should contact the OSE Project Engineer, Camilla Widvey. To schedule a site visit contact Randy Culver. Thank you for your interest in this project; we look forward to working with you.

Respectfully,



STACY WATTERS, P.E.

Stacy Watters, PE  
State Engineer

CC: Camilla Widvey, PE, OSE  
Randy Culver, BHSU

Attachments:

Copy of the A/E Consultant Contract. Please note that the contractual terms and definitions are not negotiable.

## INSTRUCTIONS

- A. Populate Source Data (Excel) **[Do this first!]**
1. Save mail merge project template to the desired project folder.
  2. Fill in the required information on the “Home” worksheet.
  3. Fill in the applicable information on the “AE.Agree” worksheet
  4. Go the “Review” ribbon, click “spelling” (or press F7) to check the spelling prior to merging.
- B. Generate Document (Word)
1. Click on “Mailings” tab
  2. Click on “Select Recipients” -> “Use an Existing List”
  3. Select the project excel document -> select “MM#AE\$” - > click “Okay”
  4. Click on “Edit Recipient List” and ensure only your desired information is checked in the checkbox. If this is your first Consultant agreement for this project, only have the first line checked in the box.
  5. Click “Finish and Merge” -> “Edit Individual Documents” -> “Okay”
  6. A new document will open with your data populated. Double check your information and save document to your project folder.
  7. Delete this page in your new document!
  8. Review any highlighted green text and update required.
  9. Delete any highlighted green text.
  10. If **ANY** template language is changed legal needs to review/approve OSE PM to coordinate with legal and include State Engineer and/or Deputy State Engineer.
    - (a) The Attorney signature line below the OSE PM review block would need the text turned black and completed.

STATE OF SOUTH DAKOTA

ARCHITECTURAL/ENGINEERING AGREEMENT

BETWEEN

«AEFirmCaps»  
«AEAddressCaps»  
«AECityStZipCaps»

Referred to as Architect/Engineer

STATE OF SOUTH DAKOTA  
«DeptAgencyCaps»

Referred to as Owner

BUREAU OF ADMINISTRATION  
OFFICE OF THE STATE ENGINEER

Referred to as OSE

«ProjTitleCaps»  
«ProjLocCaps»  
«ProjCityCaps», SOUTH DAKOTA  
OSE# «OSE\_Caps»

The State of South Dakota (“State”), acting through Owner and its representative OSE, hereby enters into this agreement (Agreement) as of «AEDate», for services with Architect/Engineer in consideration and pursuant to the terms and conditions set forth herein.

WITNESSETH:

WHEREAS, State and Architect/Engineer intend to: «AEScope» (hereinafter referred to as the “Project”);

WHEREAS, any additional terms and conditions attached to Architect/Engineer’s proposal are excluded. These agreement terms and conditions shall supersede any conflicting proposal terms;

WHEREAS, OSE will be State's representative and is authorized to act on State's behalf with respect to the Project and the Agreement Documents as defined herein by making recommendations to the parties to this Agreement; and

WHEREAS, State desires to obtain the services of Architect/Engineer and Architect/Engineer desires to perform the services described herein with reference to the Project, for the consideration, and in accordance with the covenants, terms and conditions set forth herein;

NOW THEREFORE it is mutually agreed as follows:

## I. DEFINITION OF TERMS

**Agreement Documents** - the following documents and any other documents incorporated in them by reference

1. This Agreement; and
2. Architect/Engineer's Proposal dated «**AEProposal**», excluding, however, any terms or conditions in or attached to that proposal that are in addition to, or conflict with, the terms and conditions in this Agreement, which supersede any conflicting proposal terms

**State Building Committee** – as defined in SDCL § 5-14-3, or State if a Building Committee is not applicable

**Construction Documents** – certified drawings and specifications, as required by OSE, prepared by Architect/Engineer setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Project

**Contractor** – that person serving as the general contractor for the Project

**Record Drawings** – the conformed construction drawings approved by the Architect/Engineer which incorporate all changes made to document the final constructed Project for turnover to Owner

**Record Specification** – the conformed construction specifications approved by Architect/Engineer which incorporate all changes made to document the final constructed Project for turnover to Owner

**Final Documents** – Operation and Maintenance Manuals, Record Drawings, Record Specifications, Warranties, and the following American Institute of Architect's forms: *Certificate of Substantial Completion*, AIA (AIA G704), *Contractor's Affidavit of Payment of Debts and Claims* (AIA G706), *Contractor's Affidavit of Release of Liens* (AIA G706a), and, if required, *Consent of Surety to Final Payment* (AIA G707)

**Closeout** –review and submission of Final Documents, and final payments

## II. ARCHITECT/ENGINEER RESPONSIBILITIES

- A. Architect/Engineer agrees to perform professional services in connection with the Project as set forth herein. The services shall consist of services performed by Architect/Engineer, its employees, and its consultants.
- B. Architect/Engineer, its employees, and consultants shall be responsible in the performance of the services under the Agreement Documents for exercising the degree of skill and care consistent with customarily accepted professional and technical practices and procedures for architects or engineers performing the type of services required for this Project, while providing services as expeditiously as reasonably possible, in accordance with the foregoing standard of care, to maintain the orderly progress of the Project. Architect/Engineer shall be responsible to Owner for deficiencies in the services provided which result from the failure to meet the standard given herein.

- C. Architect/Engineer shall prepare and submit to OSE for approval a schedule for the performance of Architect/Engineer's services, which may be adjusted for reasonable cause as the Project proceeds, and which shall include allowances for periods of time required for review by State and approval of submissions and for approvals of governmental regulatory authorities with jurisdiction over the Project. Except for reasonable cause, Architect/Engineer shall not exceed the schedule approved by OSE.
- D. Architect/Engineer shall complete the design and bidding phases by the dates described below. Architect/Engineer shall complete its work to accommodate the construction completion date listed below. The dates may be adjusted by written agreement between Architect/Engineer and State.

**[Group design phases as applicable]**

Programming	<b>[Delete if not used]</b>	<b>«ProgDue»</b>
Schematic Design (35%)		<b>«SDDue»</b>
Design Development (65%)		<b>«DDDue»</b>
Final Review (95%)		<b>«RevDue»</b>
Construction Documents		<b>«CDDue»</b>
Bidding		<b>«BidDue»</b>
Construction		<b>«CADue»</b>
Closeout		<b>«CloseDue»</b>

### III. TERM OF AGREEMENT

- A. Architect/Engineer's obligations under the Agreement Documents shall commence upon the execution hereof by all signatories and, if all other terms and conditions are satisfied, **shall end on «AEEnd»** unless otherwise terminated or extended pursuant to the terms hereof, except for the Architect/Engineer's obligations under Parts IX, XI, and XII of this Agreement, which by their terms survive the completion of the Project and Part X.A.2, which shall be continued for a minimum of 3 years after the date of the certification of the final Architect/Engineer's payment request.

### IV. BASIC SERVICES

Architect/Engineer shall perform the following services ("Basic Services"):

#### A. Programming Phase

- The Programming Phase of this work shall be **[Use one of following options, delete others]** completed by Architect/Engineer under a separate agreement between the parties.  
**[OR]** included in the Schematic Design Phase of this Project.  
**[OR other language as appropriate]**.
- Upon approval by the State Building Committee, the program, schedule, and construction budget developed through the programming phase shall be incorporated in and form the basis of the services described herein.

#### B. Schematic Design Phase

Architect/Engineer shall perform the following services as part of the Schematic Design Phase.

1. Prepare a complete study of proposed site.
  - (a) Furnish a survey describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings and other improvements adjacent to but not affected by the Project; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths as may be reasonably determined from available information. All the information on the survey shall be referenced to a Project benchmark. **[Delete this paragraph if surveying is not included in Architect/Engineer basic services]**

Submit Survey as follows:

- (i) Electronic Copies: 1 PDF, 1 AutoCAD zip file in UTM Coordinates. **[Delete deliverable requirements if surveying is not included in Architect/Engineer basic services]**
2. Have necessary conferences with the State Building Committee, and OSE, and other duly authorized personnel in order to determine and refine the required scope of the Project as determined in Part IV.A.
3. Prepare minutes of such conferences as stated in Part IV.B.2 and for all such meetings and conferences during this and subsequent phases of the Project. Furnish copies of all minutes to OSE within 5 business days of each meeting.
4. Employ specialists to evaluate and study special considerations of the Project, if such expertise is not available in their organization (see also Part IV.D.5). If requested by OSE, such specialists shall be present for conferences, design presentations, or observations conducted for the State Building Committee, OSE, or other personnel authorized by OSE.
5. Prepare and provide (1) electronic copy to Owner and any independent commissioning authority of each of the following:
  - (b) Basis of Design (BOD) statement including a description of proposed architectural, structural, mechanical, and electrical systems;
  - (c) schematic design studies, preliminary plans, and
  - (d) a preliminary code analysis indicating construction types, occupancy classification(s), and anticipated yard, floor area, exit protection needs, and similar considerations (see Part IV.D.3 for relevant codes and standards)to properly inform the State Building Committee and OSE of the scale and relationship of the Project components. The required documents shall include:
  - (a) any commissioning plan prepared by an independent commissioning authority (see Part VI.D); and
  - (b) Owner's project requirements prepared by Owner in the schematic design studies.

These documents shall be referred to collectively as the Schematic Design Documents

6. Prepare an estimate of cost based on current conditions and date the estimate accordingly.
7. Submit, on or before the date detailed in Part II.D, copies of items covered in Parts IV.B.1(a) **[delete IV.B.1(a) if surveying is not included in Architect/Engineer basic services]**, IV.B.5 and IV.B.6 to OSE for review by the State Building Committee and OSE in the following manner:
  - (a) Hard Copies: «**AESDFull**» full size plans (22"x34"), «**AESDHalf**» half size plans (11"x17"), «**AESDSpec**» specialist narratives
  - (b) Electronic Copies: **1** PDF plans, **1** PDF specialist narratives
8. Upon completion of the review by the State Building Committee and OSE, make necessary revisions and alterations to the preliminary plans, and report, and resubmit the same for approval to OSE.
9. Receive written approval from OSE prior to proceeding beyond this phase of the Project.

C. Design Development Phase

Architect/Engineer shall perform the following services as part of the Design Development Phase.

1. Upon written approval from OSE, prepare, in accordance with the approved schematic design phase program, schedule, and budget, those drawings, plans, elevations, outline specifications and other documents as necessary to fix and illustrate the size and character of the Project as pertains to type of architectural, mechanical and electrical systems, materials, and all other such items as may be appropriate. These documents shall be referred to collectively herein as the Design Development Documents.
2. Arrange conferences with OSE, the State Building Committee, and other authorized personnel to present and review the Design Development Documents. Architect/Engineer shall take and distribute to all participants minutes within 5 business days of this and all other Project meetings in which they participate.
3. Submit to OSE for approval a description of the number and content of bid packages, including separate material and equipment purchases, and phasing, scheduling, occupancy, and facility operation considerations.
4. Make necessary revisions to the documents as a result of the review conference(s). Advise OSE of those adjustments to the previously approved schedule and budget recommended by Architect/Engineer based upon the Design Development Documents review.
5. Provide to OSE one (1) electronic copy of a completed energy model if required by State.
6. Submit, on or before the date detailed in Part II.D, copies of items covered in Parts IV.C.3 and IV.C.4 to OSE for review by the State Building Committee and OSE in the following manner:
  - (a) Hard Copies: «**AEDDFull**» full size plans (22"x34"), «**AEDDHalf**» half size plans (11"x17"), «**AEDDSpec**» specification table of contents
  - (b) Electronic Copies: **1** PDF plans, **1** PDF specification table of contents
7. Receive written approval from OSE prior to proceeding beyond this phase of the Project.

D. Construction Documents Phase



Architect/Engineer shall perform the following services as part of the Construction Documents Phase.

1. Upon written notification from OSE, prepare construction documents consisting of Drawings, Plans, and Specifications which set forth in detail the requirements for construction of the Project, based on the approved Design Development Documents and any adjustments in the schedule, cost, quality, or scope of the Project authorized by OSE.
2. Prepare, for review by OSE, the necessary bidding information together with any suggested adjustments to State's front end document which includes: Invitation to Bid, Bidder's Checklist, Asbestos Statement, Instructions to Bidders, Bid Form, Electronic Bidding Instructions, Bid Bond, Performance and Payment Bond, Non-resident Bidder Affidavit, Contractor's Statement of Skills and Capabilities, Resident and Non-resident Subcontractor Breakout, Construction Agreement and the General Conditions and the Special Conditions to the agreement between Owner and the Construction Agreement.
3. Develop the design and the Construction Documents in compliance with applicable State laws and codes. Architectural, structural, general, mechanical, plumbing, and the electrical design shall conform to the following standards:
  - (a) The latest adopted edition of the International Code Council's *International Building Code, which includes the International Energy Conservation Code (IECC), International Existing Building Code, International Fire Code, and International Mechanical Code* and the associated appendix chapters for each code,
  - (b) The latest edition of The American Society of Heating, Refrigerating and Air-conditioning Engineers' *Energy Standard for Sites and Buildings Except Low-Rise Residential Buildings*,
  - (c) The South Dakota State Plumbing Commission's current rules and regulations governing the installation of plumbing,
  - (d) The State Electrical Commission's current rules and regulations governing the installation of electrical wiring, fixtures, and equipment,
  - (e) The current South Dakota State Glazing Law,
  - (f) The applicable *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities*, and
  - (g) The latest *United States National CAD Standards* as they pertain to plans and drawings.
  - (h) **The latest edition of the American Correctional Association's *Performance-Based Standards and Expected Practices for Adult Correctional Institutions Part Two: Physical Plant*.** [delete this section for non-DIC facilities, update commas, periods and "and" if keeping this section.]

Should there be a conflict between any of the above "Codes", Guides, or "Laws" the more stringent shall apply.

4. Assist State in securing the necessary permits and making the necessary filings required to obtain the approval of governmental authorities having jurisdiction over the Project.

5. Employ such specialists as may be required to evaluate, study, and assist in design for special considerations of the Project if such professional expertise is not available in Architect/Engineer's organization, except those services indicated in the Agreement Documents as being provided by State. Employment of such specialists is part of the Basic Services provided under the Agreement Documents, except for those specialists as identified in Parts **if surveying is not included in Architect/Engineer basic services, add "VI.B (surveying services)."** VI.C (geotechnical engineering services), VI.D (commissioning authority), and VI.E (abatement services).
6. Submit to OSE, on or before the date to be specified in the written authority to proceed with this phase, complete sets of 95% plans and specifications for review by the State Building Committee and OSE as follows:
  - (a) Hard Copies: **«AE95Full»** full size plans (22"x34"), **«AE95Half»** half size plans (11"x17"), **«AE95Spec»** specifications
  - (b) Electronic Copies: **1** PDF plans, **1** PDF specifications
7. Make necessary revisions to the 95% plans and specifications as required, based on review by the State Building Committee and OSE.
8. Following receipt of the Advertisement for Bids, submit complete sets of Construction Documents as follows:
  - (a) Hard Copies: **«AECDFull»** full size plans (22"x34"), **«AECDFHalf»** half size plans (11"x17"), **«AECDSpec»** specifications. Specifications and half size plans to be bound together into one document, when possible.
  - (b) Electronic Copies: **1** PDF plans , **1** PDF specifications
9. Advise State of any adjustments to previous preliminary estimates of construction costs and project budget necessitated by changes in requirements or general market conditions and submit for review new estimates dated the date the estimate is made to State.
10. If State hires a commissioning authority, coordinate a review meeting with the commissioning authority, OSE, Architect/Engineer staff and its subconsultants to verify that all architectural, structural, general, mechanical, plumbing, and electrical design components, including specifications, provide for the commissioning authority's ability to confirm and certify all related systems, configurations, status of operations, sequence of operations, efficiencies, quantity measurements, loads, safety components, interconnectivity of systems, etc. Architect/Engineer shall take meeting minutes and distribute to attendees within 5 business days of the review meeting.

#### E. Bidding Phase

Architect/Engineer shall provide the following services as part of the Bidding Phase.

1. Prepare the Construction Documents and individual bid packages. OSE will advertise the Project and furnish Architect/Engineer a copy of the front ends for insertion in the bidding documents.

2. Assist OSE in securing bids, including any appropriate notification of plan exchanges, contractors, or other organizations. Furnish plans and specifications to each bona fide bidder requesting the same, as well as to such major suppliers as is believed it would be advantageous to State to use in quoting to contractors (Cost of plans and specifications is covered in Part XV.F and XV.G).
3. Issue addenda, as appropriate, to clarify, correct, or modify the Construction Documents.
4. Shall participate in and take meeting minutes of the pre-bid meeting. Copies of the minutes are to be distributed to attendees within 3 business days of the pre-bid meeting.
5. Following the bid opening, submit to OSE a written analysis of the bids and a recommendation on awarding of contracts. As requested, provide other assistance in awarding or preparing construction agreements.
6. Furnish to successful bidders to whom contracts have been awarded final plans and specifications as necessary for the prosecution of the Project or as required by the conditions of the construction contract (cost of said plans and specifications is covered in Part XV.F and XV.G).

F. Construction Phase - Administration of the Construction Agreement

Architect/Engineer shall provide services as described herein, and in accordance with the conditions of the executed agreement between Owner and the Contractor provided by OSE as part of the Construction Phase. Services under this phase shall commence upon award of subcontracts and agreements. Duties, responsibilities and limitations of authority of Architect/Engineer shall not be restricted, modified, or extended without written agreement of Architect/Engineer and Owner.

1. Architect/Engineer shall participate in and take meeting minutes of the pre-construction meeting. Copies of the minutes are to be distributed to attendees within 5 business days of the pre-construction meeting.
2. Architect/Engineer shall be the representative of State during the construction phase of the Project, and shall advise and consult with OSE. Instructions to the Contractor shall be forwarded through Architect/Engineer. Architect/Engineer shall have the authority to act on behalf of State only to the extent provided in the Agreement Documents, unless otherwise specifically agreed in writing.

3. Architect/Engineer shall visit the construction site at intervals appropriate to the stage of construction, but averaging every «**AEVisit**», 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 agreement documents. On the basis of such observations, Architect/Engineer shall keep OSE informed of the progress and quality of the work on the Project and endeavor to guard State against defects and deficiencies in the work of the Contractor. «**AEReportFreq**», Architect/Engineer shall provide a written report to OSE as to the progress of the Project, items noted for correction, and remedial actions, if any, required. OSE may attend such site observations, and other observance activities conducted by Architect/Engineer, or may on their own observe the progress of the Project at other times, but the responsibility for performing any observations of the construction work in accordance with this paragraph remains with Architect/Engineer. Any services provided pursuant to Part V.B shall be an additional service over and above the services to be provided under this paragraph.
4. Architect/Engineer shall endeavor at all times to guard State against defects and deficiencies in the Project as executed by the Contractor, however, Architect/Engineer shall not be required to guarantee the performance of the Contractor.
5. Prompt written notice shall be given by Architect/Engineer to OSE if Architect/Engineer becomes aware of any fault or defect in the Project or non-conformance with the agreement documents.
6. Architect/Engineer shall determine the amounts owing to the Contractor based on 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 approved by OSE. A Certificate of Payment constitutes a representation by Architect/Engineer to State, based upon the observations and the information provided by the Contractor in the Application, that the Project has progressed to the point indicated; that to the best of Architect/Engineer's knowledge, information, and belief, the quality of the work on the Project is in accordance with the Agreement Documents; and that the Contractor is entitled to payment in the amount certified. Architect/Engineer shall approve or reject all of the Contractor's Monthly Applications for Payment within 5 days.
7. Architect/Engineer shall review and approve or take other appropriate action on shop drawings, product data, and samples submitted by the Contractor to determine if they conform with the design concept for the Project and with the information provided in the Agreement Documents, and submit these documents or information to OSE indicating Architect/Engineer'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 Architect/Engineer's approval of an assembly of which the item is a component. When professional certification of equipment is required by the Agreement Documents, Architect/Engineer will be entitled to rely upon that certification to determine that the materials, systems, or equipment will meet the performance criteria required in the Agreement Documents.

8. Architect/Engineer shall consult with and advise OSE during construction on any items which concern interpretation of design. Architect/Engineer shall make recommendations to OSE on any adjustments that may be proposed by the Contractor or Owner. Architect/Engineer shall make such necessary drawings or prepare descriptive information for change order request(s) for proposal ("RFP") as required and shall review the RFP(s) for accuracy and make recommendations to OSE.
9. Architect/Engineer shall conduct, at the time and place approved by OSE, with Owner and the Contractor, observations to establish dates of Project acceptance and completion. Architect/Engineer shall have other architects, structural, mechanical, or electrical engineers, or other consultants in their employ in attendance at this and at various progress observations as may be necessary to evaluate whether the work completed on the Project is in conformance with the Agreement Documents. Architect/Engineer shall receive and forward to OSE, with comments on completeness or acceptability, those warranties, operation manuals, and other documents required by the Agreement Documents and assembled by the Contractor.
10. Architect/Engineer will review the application for final payment to the Contractor and provide a certificated final payment to OSE.
11. Architect/Engineer shall provide to OSE or the Contractor, upon written request, interpretations and decisions in writing, or in the form of drawings, on matters concerning performance under the Agreement 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 OSE.
12. Architect/Engineer shall maintain a log of all Requests for Information, Requests for Proposals, and Change Orders. Within 5 business days of a request by OSE, Architect/Engineer shall submit a single compiled pdf to include all outstanding RFPs to OSE for inclusion in a Construction Change Order for electronic signature routing.
13. Architect/Engineer shall attend «**AEMtg**» construction progress meetings and take minutes of said meetings. Architect/Engineer shall publish minutes of said meetings to Owner, State Engineer's Representative, and the Contractor within 5 business days of each meeting.
14. If State hires a commissioning authority, Architect/Engineer shall coordinate with the commissioning authority during execution of construction phase commissioning activities and participate in meetings with the independent commissioning authority, Owner and the Contractor.
15. Architect/Engineer shall not have control over or charge of and shall not be responsible for:
  - (a) 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 between Owner and the Contractor; and
  - (b) the Contractor's schedules or failure to carry out the Project in accordance with the Agreement Documents;

except to the extent Architect/Engineer authorized a scope adjustment or schedule modification not approved by OSE in accordance with this Agreement. Architect/Engineer will 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 Architect/Engineer 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 Agreement Documents. Architect/Engineer shall inform the Contractor on behalf of, and upon consultation with, OSE 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. Nothing in this paragraph is intended to relieve Architect/Engineer of its responsibility as set forth in the Agreement Documents to observe that the Project is completed in accordance with the Agreement Documents.

16. Architect/Engineer shall at all times have access to the Project wherever it is in preparation or progress.
17. Except as may otherwise be provided in the Agreement Documents or when direct communications have been approved by Architect/Engineer, State and the Contractor shall communicate through Architect/Engineer. Communications by and with Architect/Engineer's consultants shall be through Architect/Engineer.
18. Architect/Engineer will have authority to reject work on the Project, which does not conform to the Agreement Documents. Whenever Architect/Engineer considers it necessary or advisable for implementation of the intent of the Agreement Documents, Architect/Engineer will have authority to require additional inspection or testing of the work in accordance with the provisions of the Agreement Documents, whether or not such work is fabricated, installed, or completed. However, neither this authority of Architect/Engineer 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 Architect/Engineer to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the work on the Project.

#### G. Closeout Phase

Architect/Engineer shall provide project close-out services and Final Documents as described herein, and in accordance with the conditions of the of the executed Construction Agreement provided by OSE. Services under this phase shall commence upon award of Substantial Completion to the Contractor.

1. *Substantial Completion Walk-Through.* Together with OSE, visit the site to observe any apparent defects in the work. Prepare a punch list of defective items and, at all times, withhold no less than twice the value of the punch list items when reviewing payments. Assist OSE in consultations and discussions with the Contractor concerning correction of any such defects, and make recommendations as to the replacement or correction of defective work, if present.
2. *Final Completion Walk-Through.* Together with OSE, visit the site to observe corrections made per the punch list and determine if corrections are acceptable.

3. *Record Drawings.* When the Project is completed, Architect/Engineer shall furnish reproducible Record Drawings with all construction changes duly noted, to OSE for State's permanent files, together with a summary of all final program requirements and design criteria and data. These are to be printed on double matte Mylar unless a suitable replacement is submitted to and subsequently approved by OSE. The Mylar used must be of 3 mil or 4 mil thickness with a preference for 3 mil unless heat-based printing is used, in which 4 mil thickness is required.

Architect/Engineer shall submit AutoCAD compatible bound drawings with all external references properly attached via approved electronic form (CD or flash drive) and PDF compatible drawings sharing the same layout specifications as the AutoCAD version. All DWG files need to be properly saved so that all x-refs remain attached to the files when opened with a state computer. DWG files may not be write-protected. CD or flash drive shall include all PDF, AutoCAD, and other original design files (Revit).

Submit all Final Documents as follows:

- (a) Hard Copies: «**AEMylar**» full size Record Drawings (22"x34")
  - (b) Electronic Copies: **1** PDF Record Drawings, **1** PDF Record Specifications, **1** AutoCAD zip file
4. *Operation and Maintenance Manuals.* Architect/Engineer shall review Operation and Maintenance Manuals submitted by the Contractor. Once approved, Operation and Maintenance Manuals shall be submitted as follows:
    - (a) Hard Copies: «**AEO\_M**» 3-ring bound copy
    - (b) Electronic Copies: **1** single PDF file
  5. All Final Documents must be submitted to OSE on or before the closeout date detailed in Part II.D, following issuance of a final payment to the Contractor.

## **V. ADDITIONAL SERVICES**

- A. The services described in Part V are not included in the Basic Services. If State requires services described in Part V, only those costs expressly authorized in advance by Owner will be paid at a separately negotiated rate in addition to the compensation for Basic Services unless otherwise indicated in the Agreement Documents.
  1. If services described under Contingent Additional Services are required, Architect/Engineer shall promptly notify OSE of the anticipated scope of such services prior to commencing same and will not proceed without written notice from OSE.
  2. If the services described under Optional Additional Services are required for the completion of the Project in accordance with the approved schedule, Architect/Engineer shall notify OSE in a timely manner to allow State to obtain these services in a manner that best suits State's needs.
- B. Project Representation Beyond Basic Services
  1. When more extensive representation at the Project site than is described in Part IV.F.3 is required and authorized by State, Architect/Engineer shall provide one or more Project representatives to assist in carrying out such additional on-site responsibilities.

2. Project representatives shall be selected, employed and directed by Architect/Engineer, subject to the approval of OSE. Architect/Engineer shall be compensated for these representatives at such rates as are mutually agreed upon at the time of approval, which shall be set forth in an amendment hereto. The duties and responsibilities of the Project representative shall be delineated in the Amendment to the Agreement Documents authorizing those services.
3. Architect/Engineer shall endeavor through the observations and reports of such Project representatives, to provide further protection for State against defects and deficiencies in the Project, but the furnishing of Project representation will not otherwise modify the rights, responsibilities, or obligations of Architect/Engineer as set forth elsewhere in the Agreement Documents.

C. Contingent Additional Services

1. Making revisions in Plans and Specifications or other documents when such revisions are:
  - (a) Inconsistent with approvals or instructions previously given by State, including revisions made necessary by adjustments in State's program or Project budget (this does not include revisions made in accordance with the implementation of Parts VII.C or VII.D);
  - (b) Required by the enactment or revision of codes, laws or regulations subsequent to the initiation of the preparation of Construction Documents; or
  - (c) Due to changes required as a result of State's failure to render decisions in a timely manner.
2. Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, State's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Part VII.D. For those changes in the Project, which result in an increase in services, Architect/Engineer shall be compensated in accordance with Part XV.B.
3. Providing consultation concerning replacement of the Project, or any part thereof, or work done thereon, damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of the Project.
4. Providing services made necessary by default of the Contractor, or by failure of Owner to perform its obligations under the Agreement Documents.
5. Providing services in connection with public hearings, arbitration, or legal proceedings except where Architect/Engineer is a party thereto.

D. Optional Additional Services

1. Financial feasibility or other studies;
2. Planning surveys or comparative studies of prospective sites;
3. Special surveys, environmental studies, and similar submissions needed for approval of governmental authorities having regulatory jurisdiction; and
4. Coordination of construction performed by five or more building construction contractors.



- E. Services required because of an extension of the construction schedule resulting from events for which the Contractor is entitled only to a time extension as set forth in Article 10 of State's General Conditions for Construction, are not additional services and Architect/Engineer shall not be compensated for such services.
- F. If Architect/Engineer wishes to make a claim for an increase in the agreement fee, it shall give Owner and OSE written notice within ten (10) days after the occurrence of the event, giving rise to such claim. Supporting documentation for any claim arising prior to substantial completion of construction shall be submitted to State no later than thirty (30) days after substantial completion. Supporting documentation for claims arising after substantial completion shall be submitted to State no later than fifteen (15) days after final completion of construction. Any change in the agreement fee shall be authorized by formal written modification signed by State. No claim for an increase in the agreement fee shall be valid unless made in accordance with this section.

## **VI. OWNER'S RESPONSIBILITIES AND COORDINATION**

- A. OSE shall examine the documents submitted by Architect/Engineer and described herein and shall render decisions and/or recommendations pertaining thereto promptly, to avoid unreasonable delay in the progress of Architect/Engineer services. OSE shall at all times have access to the Project site. OSE shall notify Architect/Engineer promptly upon discovery of any materials, methods, or other features of the services, which do not meet State's approval. Architect/Engineer shall also designate a member of its organization who will be responsible for the execution of the services and who will be the authorized representative of Architect/Engineer regarding the services. Architect/Engineer's Representative shall be a principal of the firm or other individual subject to approval by OSE.

- B. Intentionally Omitted

[If surveying is not included in Architect/Engineer basic services, replace "Intentionally Omitted" with the following paragraph.]

State, with procurement and coordination assistance of Architect/Engineer when requested, shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings and other improvements adjacent to but not affected by the Project; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths as may be reasonably determined from available information. All the information on the survey shall be referenced to a Project benchmark.

- C. State shall furnish the services of geotechnical engineers when such services are requested by Architect/Engineer and as are determined appropriate by OSE. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion, and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

- D. State may furnish the services of a commissioning authority during the Schematic Design Phase, Design Development Phase, Construction Document Phase and Construction Phase to develop a commissioning plan and to aid Architect/Engineer in including various components of the plan in the final Plans and Specifications. The commissioning authority shall provide a final commissioning report of findings to Architect/Engineer for inclusion in Architect/Engineers final observation report.
- E. If testing by State reveals that abatement of hazardous materials is involved in the project, State shall furnish the services of an Abatement Designer to develop bid documents specifically related to abatement of the hazardous materials. Architect/Engineer may be required to include these bid documents as a part of their plans and specifications and will identify such documents as the work product of the Abatement Designer. Architect/Engineer may include the notation that they "are not responsible for said abatement documents included in these plans and specifications." The bid documents shall state that the cost of abatement must be treated as a separate bid item. Abatement is not part of Architect/Engineer's Basic Services. Architect/Engineer will not be expected to inspect or monitor any abatement activities during the course of construction. However, Architect/Engineer is expected to recognize the impact of the abatement activities on their portion of the construction and to accommodate such impact in their design.

Recognizing that Architect/Engineer is not responsible or liable for hazardous materials existing and in place prior to commencement of this Project, or for the activities of any Abatement Designer or the Contractor, Architect/Engineer is not required to carry professional liability insurance or insurance rider for asbestos abatement activities.

## **VII. CONSTRUCTION COSTS AND PROJECT BUDGET**

- A. Architect/Engineer shall develop and prepare a Project budget in a format acceptable to OSE, including a detailed estimate of construction costs, dated the actual date the estimate is made. The Project budget shall be updated and reviewed with State at intervals appropriate to the Project. Architect/Engineer shall advise OSE of any adjustments to the budget and estimate of construction costs required by changes in Project scope, quality, or requirements and by general market conditions, and shall submit such proposed adjustments to OSE for approval. The budget and estimate of construction costs shall represent Architect/Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither Architect/Engineer nor State has control over the various components of construction costs, and therefore the parties acknowledge that Architect/Engineer does not warrant or represent that the Project budget and estimate of costs will not vary from those submitted to, and approved by State.
- B. The fixed limit of construction cost for the Project shall be set at «**AEFLCC**». Architect/Engineer shall advise OSE when, in its opinion, subsequent Project scope changes require either an adjustment of the fixed limit of construction cost or adjustments in the scope of construction. Architect/Engineer shall propose recommended adjustments in the scope of construction necessary to keep the Project within the fixed limit of construction cost.
- C. If the fixed limit of construction cost is exceeded by the lowest bona fide bid or proposal received , State may:
  - 1. Recommend acceptance of the lowest bona fide bid, but that acceptance shall not increase Architect/Engineer's fee under Part XV of the Agreement Documents

2. Approve re-advertisement and bidding of the Project as designed; or
  3. In consultation with the Architect/Engineer, revise the Project program, scope, or quality as required to reduce the cost of the work.
- D. If State elects to implement Part VII.C.3, Architect/Engineer shall modify the Construction Documents as required to comply with the fixed limit of construction cost with no additional compensation.

## **VIII. DISPUTES**

- A. Unless otherwise specifically provided in the Agreement Documents, all claims, counter-claims, disputes or other matters in questions between State and Architect/Engineer arising out of, or relating to the Agreement Documents, or the breach thereof, will be decided by direct negotiations, by non-binding mediation if the parties mutually agree, or in a circuit court of competent jurisdiction within State. Notice of a request for mediation shall be sent in writing to the other party to the Agreement Documents within a reasonable time after the claim, dispute, or other matter in question has arisen. If the party receiving notice of request does not agree to mediation in writing within 10 calendar days, it will be deemed that the parties do not mutually agree to mediate the matter. If the parties agree to mediate, a mediator to hear the dispute will be agreed upon by the parties. If agreement on a mediator cannot be reached, State shall select the mediator.

## **IX. INDEMNITY PROVISION**

- A. Architect/Engineer agrees to indemnify and defend the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief to the extent arising as a result of Architect/Engineer's negligence, tortious acts, or intentional acts in performing services under this Agreement. For purposes of this section, "Architect/Engineer" includes any subconsultant performing services for any portion or component of this Agreement. Notwithstanding the foregoing, State may, in its sole discretion engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Architect/Engineer in the defense. If State exercises this authority and Architect/Engineer is determined to be liable, then State is entitled to reimbursement of its reasonable attorney fees and costs in defending the suit in proportion to the degree of liability attributed to Architect/Engineer in the proceeding. This section does not require Architect/Engineer to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of State, its officers, agents or employees.

## **X. INSURANCE**

- A. At all times during the term of this Agreement, Architect/Engineer shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

1. *Commercial General Liability Insurance:*  
Architect/Engineer shall maintain occurrence-based commercial general liability insurance or equivalent form of coverage **with a limit of not less than «AECGLwords» («AECGLvalue») for 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. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.
2. *Professional Liability Insurance or Miscellaneous Professional Liability Insurance:*  
Architect/Engineer agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance **with a limit not less than one million dollars (\$1,000,000).** The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.
3. *Business Automobile Liability Insurance:*  
Architect/Engineer shall maintain business automobile liability insurance or equivalent form **with a limit of not less than one million dollars (\$1,000,000) for each accident.** This insurance shall include coverage for owned, hired and non-owned vehicles. State, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.
4. *Worker's Compensation Insurance:*  
Architect/Engineer shall procure and maintain workers' compensation and employers' liability insurance **as required by South Dakota or Federal law.**

Before beginning work under this Agreement, Architect/Engineer shall furnish State with properly executed certificates of insurance which shall clearly evidence all insurance required in this Agreement including naming State, its officers and employees, as additional insureds, as set forth above. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Architect/Engineer agrees to provide immediate notice to State and provide a new certificate of insurance showing continuous coverage in the amounts required. Architect/Engineer shall furnish copies of any insurance policies if requested by State.

## **XI. TERMINATION PROVISION**

- A. This Agreement may be terminated by either party hereto upon thirty (30) days' written notice. In the event Architect/Engineer breaches any of the terms or conditions hereof, this Agreement may be terminated by State at any time with or without notice. If termination for a breach is affected by State, any payments due to Architect/Engineer at the time of termination may be adjusted to cover any additional costs to State because of Architect/Engineer's breach. Upon termination State may take over the work and may award another party an agreement to complete the work contemplated by this Agreement. If after State terminates for a breach by Architect/Engineer it is determined that Architect/Engineer was not at fault, then Architect/Engineer shall be paid for eligible services rendered and expenses incurred up to the date of termination.

- B. State may, without being in default under this Agreement, terminate for its convenience all or any portion of the services provided under this Agreement by giving 20 days written notice to Architect/Engineer. In the event of such termination State shall pay to Architect/Engineer all compensation earned up to the effective date of termination. An equitable adjustment in compensation shall be made to provide Architect/Engineer with reasonable compensation for the costs of winding down its services and canceling its performance of services under this Agreement.
- C. Upon termination for either default or convenience, Architect/Engineer shall turn over to State all data, plans, specifications, drawings, and information gathered or developed for any uncompleted services covered by this Agreement.

## **XII. OWNERSHIP, USE OF DOCUMENTS, CONFIDENTIALITY OF DOCUMENTS**

- A. Ownership of Work Product: Upon payment as herein provided, the reports, plans, specifications, engineering calculations, technical data, all miscellaneous drawings, and all information contained therein provided by Architect/Engineer in connection with its performance under the Agreement Documents shall become the property of State. Architect/Engineer assigns to State all right, title, and interest, including all copyrights, in any work now existing or later create by Architect/Engineer under the Agreement Documents. Architect/Engineer shall sign any documents State considers necessary to secure any copyrights or other intellectual property rights to State with no additional charge. State hereby grants Architect/Engineer the right to retain copies of such materials and information to use these materials in any future work with State. Architect/Engineer may not disseminate these materials to any person or entity, nor may Architect/Engineer use these materials for purposes other than work for State, without the express written approval of State.

It is agreed that Architect/Engineer will not be responsible for State's use of these materials and information for purposes other than the Project, unless there is a written agreement between the parties specifying otherwise.

- B. Digital Data: All digital data associated with the Project is the property of State. The original developer of digital data shall not be responsible for any alterations of that digital data after sending to another party.
- C. Confidentiality of Work Product and Information Provided by State: All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided or prepared by Architect/Engineer, its owners, officers, employees, agents, consultants, contractors, and contractors in connection with its performance under the Agreement Documents and all such information provided by State to Architect/Engineer for the performance of the Agreement Documents are confidential and Architect/Engineer, its owners, officers, employees, agents, consultants, construction managers, and contractors shall not disclose this information to any person, individual, or entity without the express written permission of State.
- D. Architect/Engineer shall include the requirements of Part XII in any agreement it enters into with other designers, consultants, contractors, contractors, persons, individuals, or entities for the performance of any of Architect/Engineer's obligations under the Agreement Documents.

## **XIII. MISCELLANEOUS PROVISIONS**

- A. While performing services hereunder, Architect/Engineer is an independent consultant and not an officer, agent, or employee of the State of South Dakota.

- B. This Agreement is intended to govern only the rights and interests of the parties named herein. It is not intended to create, does not and may not be relied upon to create, any rights, substantive or procedural, enforceable at law by any third party in any matters, civil or criminal.
- C. This Agreement may not be assigned without the express prior written consent of State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.
- D. Architect/Engineer will comply in full with all federal, tribal, state and local laws, regulations, ordinances, guidelines, permits, requirements and other standards applicable to the services provided under this Agreement and will be solely responsible for obtaining current information regarding the foregoing. Nothing herein shall constitute a waiver by State to any defense to jurisdiction nor shall anything herein constitute an acknowledgement by State that any tribe has or exercises any jurisdiction over this Agreement or the parties.
- E. Architect/Engineer agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 U.S.C. 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 C.F.R. Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the agreement.
- F. Architect/Engineer agrees to report to State any event encountered in the course of performance of this Agreement which results in an injury to any person or property, or which may otherwise subject Architect/Engineer, or the State of South Dakota or its officers, agents or employees to liability. Architect/Engineer shall report any such event to State immediately upon discovery.

Architect/Engineer's obligation under this section shall only be to report the occurrence of any event to State and to make any other report provided for by their duties or applicable law.

Architect/Engineer's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to State under this section shall not excuse or satisfy any obligation of Architect/Engineer to report any event to law enforcement or other entities under the requirements of any applicable law.

- G. Architect/Engineer may not use subconsultants to perform the services described herein without the express prior written consent of State. Architect/Engineer will include provisions in its subcontracts requiring its sub-consultants to comply with the applicable provisions of this Agreement, to indemnify State, and to provide insurance coverage in a manner consistent with this Agreement. Architect/Engineer will cause its sub-consultants, agents, and employees to comply with applicable federal, tribal, state, and local laws, regulations, ordinances, guidelines, permits and other standards and will adopt such review and inspection procedures as are necessary to assure such compliance. State, at its option, may require the vetting of any sub-consultants. Architect/Engineer shall assist in the vetting process.
- H. State reserves the right to reject any person from performing services under this Agreement who State believes would be detrimental to the services, presents insufficient skills, presents inappropriate behavior or is considered by State to be a security risk.
- I. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
- J. The Agreement Documents constitute the entire agreement among the parties with reference to the services described herein and shall not be amended or modified except in writing, signed by an authorized representative of each party. The Agreement Documents supersede all prior negotiations, representations, or agreements, whether oral or written, relating to the services herein described.
- K. Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for any delay or failure to perform under the terms and conditions of this Agreement, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, or other causes beyond the party's reasonable control provided, however, that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.
- L. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provision in this Agreement.
- M. Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers or employees.
- N. Neither party shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. Architect/Engineer acknowledges that the State of South Dakota and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for State to take any action that State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including, without limitation, posting this Agreement on the website pursuant to SDCL § 1-27-46. Architect/Engineer agrees that the Agreement and any prices, fees and rates agreed to be paid by State under the Agreement are not confidential.

- O. In the performance of these services and providing the deliverables under the Agreement, Architect/Engineer, and its employees shall exercise the degree of skill and care consistent with customarily accepted practices and procedures for the performance of the type of services required. Architect/Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and deliverables furnished by Architect/Engineer and any sub-consultants, if applicable, under this Agreement. It shall be the duty of Architect/Engineer to assure that its services and deliverables are technically sound and in conformance with all pertinent technical codes and standards. Architect/Engineer represents and warrants that: (i) it shall give high priority to the performance of the services; and (ii) the services shall be performed in a timely manner.
- P. Architect/Engineer shall be responsible to State for material deficiencies in the Agreement deliverables and services which result from the failure to meet the standard given herein. Architect/Engineer shall promptly correct or revise any material errors or omissions in deliverables and re-perform any services which are not in compliance with such representations and warranties at no cost to State, provided that Architect/Engineer's failure to comply is not due solely to the actions, errors, or omissions of State.
- Q. Permitted or required approval by State of any services or deliverables furnished by Architect/Engineer shall not in any way relieve Architect/Engineer of its responsibility for the professional quality and technical accuracy and adequacy of its work. State's review, approval, acceptance, or payment for any of Architect/Engineer's services or deliverables herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and except as provided herein Architect/Engineer shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to State caused by Architect/Engineer's performance or failure to perform under this Agreement.
- R. In the event of a breach of these representations and warranties, State shall provide telephonic or electronic notice to Architect/Engineer. State may, in its sole discretion, require Architect/Engineer to cure such breaches. If it is necessary for Architect/Engineer to send at least one qualified and knowledgeable representative to State's site where the system is located, this will be done at Architect/Engineer's expense. This representative will continue to address and work to remedy the deficiency, failure, malfunction, defect, or problem at the site. The rights and remedies provided in this paragraph are in addition to any other rights or remedies provided in this Agreement or by law.
- S. The award of this Agreement to Architect/Engineer is not in any way an endorsement of Architect/Engineer or Architect/Engineer's services by the State of South Dakota and may not be so represented by Architect/Engineer in any advertising or publicity materials. Architect/Engineer agrees to submit to State all advertising, sales promotion, and other publicity relating to this Agreement wherein State's name is mentioned, or language is used from which the connection of State's name therewith may, in State's judgment, be inferred or implied. Architect/Engineer further agrees not to publish or use such advertising, sales promotion, or publicity without the prior written consent of State. Architect/Engineer may not in any way contract on behalf of or in the name of State, nor may release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Agreement without obtaining the prior written approval of State.



- T. Architect/Engineer shall be responsible for all taxes, assessments, permit fees, or other charges pertaining to its performance of the services pursuant to the Agreement Documents, including exclusive liability for all contributions, taxes, or payments required to be made on account of Architect/Engineer's employees under State and Federal laws relating to unemployment compensation, worker's compensation, income tax, social security, or other legislation requiring the payment of similar contributions or taxes.
- U. Architect/Engineer shall maintain and provide necessary supporting documentation for audit purposes during the term hereof and for a period of one year after the completion of services hereunder. Accounting records shall be kept on the basis of generally accepted accounting principles. Records shall be available to State or its authorized agents and representatives upon request during normal business hours at mutually convenient times.
- V. Extension of the Project completion date must be mutually agreed upon in writing among Owner, OSE, and Architect/Engineer. Reasonable requests for time extensions will be accepted. If OSE determines that Architect/Engineer's performance of services has caused a delay to the Contractor in the fulfillment of their contractual completion date (to which Owner did not consent) or to Owner of the agreed-upon design or Project completion date, then State may deduct documented costs incurred by Owner as a result of this delay from the total A/E fee described in Part XV.A. Furthermore, Architect/Engineer will not be paid for work performed related to such delay. Notwithstanding any other language in the Agreement Documents, Architect/Engineer shall not be responsible for delays caused by factors beyond Architect/Engineer's reasonable control, including, but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, or those caused by State or any other contractors.

#### **XIV. NOTICE:**

- A. Any notice required under this Agreement provided for or permitted by the Agreement Documents shall be sufficient when mailed (by registered or certified mail, return receipt requested, postage prepaid), or through email communication, confirmation received. If notice is given by telephone it must be confirmed in writing, sent by any of the above methods on the same day; addressed to the parties as follows at the following addresses, or such other address as may be provided by any party by notice, and shall be deemed effective upon receipt:

If to Architect/Engineer:

«AEFirm»  
Attn: «AEContact»  
«AEAddress»  
«AECityStZip»  
Phone: «AEPHONE»  
Email: «AEEmail»

If to State: If giving notice to State, notice shall be given to both of the following, unless otherwise specifically specified in the Agreement Documents:

Bureau of Human Resources and  
Administration,

The Office of the State Engineer  
Attn: «SOSE», «SOSETitle»  
Joe Foss Building 523 East Capitol Avenue  
Pierre SD 57501-3182  
Phone: 605.773.3466  
Email: Stacy.Watters@state.sd.us

«ProjLoc»  
Attn: «CampusContact»  
«CampusAddress»  
«CampusCityStZip»  
Phone: «CampusPhone»  
Email: «CampusEmail»

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

**XV. AGREEMENT AMOUNT AND PAYMENT**

- A. The fee to be paid to Architect/Engineer for Basic Services shall be «AETotalFee».
- B. In the event of a change in the scope of the Project, which results in additional work by Architect/Engineer, an increase in the fee to be paid Architect/Engineer shall be negotiated. An increase in construction costs shall not alone constitute a change in the scope of the Project and does not warrant a fee increase.
- C. Architect/Engineer shall submit itemized invoices on a monthly basis to OSE. Invoices shall be submitted via email, include the OSE project number and document to the satisfaction of OSE the actual percentage of completion of each phase as follows: **[Group design phases as applicable]**

Programming <b>[Delete if not used]</b>	«AEProgFee»
Schematic Design Phase	«AESDFee»
Design Development Phase	«AEDDFee»
Construction Documents Phase	«AECDFee»
Bidding Phase	«AEBidFee»
Construction	«AECAFee»
Closeout Phases	<u>«AECloseFee»</u>

**Total: «AETotalFee»**

- D. If Owner retains any portion of payment that is properly due and undisputed beyond the time for payment specified herein and for reasons other than those required by statute, Owner shall owe and pay Architect/Engineer four percent (4%) interest compounded annually on the retained amount starting from the date payment first becomes due under this article.
- E. State will not pay Architect/Engineer's expenses, including but not limited to travel, lodging and meals, as a separate item. Payment will be made pursuant to itemized invoices. Payment will be made consistent with SDCL ch. 5-26. Any overpayment of this Agreement shall be returned to State within thirty (30) days after written notification to Architect/Engineer.
- F. There shall be no charge to State for preliminary or review plans and specifications and up to four (4) sets of Construction Documents. All sets above four (4), including postage and binding, will be charged to State as a reimbursable expense at cost (no profit). Architect/Engineer shall provide itemized invoices, showing reimbursable cost breakouts.
- G. No bona fide bidder can be charged directly for Construction Documents.
- H. No extra payment will be made by State for Record Drawings unless, in the opinion of OSE, the magnitude of change orders and/or observed field conditions are significant enough to warrant a negotiated hourly or lump sum payment for same.
- I. If in the Construction Phase the Contractor's completion date is exceeded, and if liquidated damages are assessed Architect/Engineer will be compensated for its extra services beyond the completion date by sharing a negotiated portion of said liquidated damages.

## **XVI. CERTIFICATIONS**

### **A. Certification regarding Debarment, Suspension, and Voluntary Exclusion**

Architect/Engineer 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.

### **B. Compliance with Executive Order 2020-01**

Pursuant Executive Order 2020-01, for contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this contract «**AEFirm**» certifies and agrees that it has not refused to transact business activities, have not terminated business activities, and have not taken other similar actions intended to limit its commercial relations, related to the subject matter of the contract, with a person or entity that is either State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of State of Israel to do business, or doing business in State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for State to terminate this contract «**AEFirm**» further agrees to provide immediate written notice to State if during the term of the contract it no longer complies with this certification, and agrees such noncompliance may be grounds for contract termination.”

### **C. Compliance with SDCL ch. 5-18A**

Architect/Engineer certifies and agrees that the following information is correct:

Architect/Engineer is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by Architect/Engineer on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

Architect/Engineer further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

**D. Certification of No State Legislator Interest**

Architect/Engineer (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Architect/Engineer hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

**XVII. CONTROLLING LAW AND VENUE**

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

**XVIII. AUTHORITY TO EXECUTE**

**[If Architect/Engineer is not a corporation, limited liability company, or a limited liability partnership, strike through Part XVIII.A.]**

Architect/Engineer represents and warrants that:

- A. Architect/Engineer is a corporation duly incorporated, a limited liability company duly formed, or a limited liability partnership duly formed; and is validly existing and in good standing under the laws of its state of incorporation or formation; and has all requisite corporate or organizational (as the case may be) power and authority to execute, deliver and perform its obligations under this Agreement;

- B. The execution, delivery and performance of this Agreement has been duly authorized by Architect/Engineer; the individual(s) signing this Agreement on behalf of Architect/Engineer are authorized under the terms of its governing documents; and no approval, authorization or consent of any member, private party, governmental or regulatory agency is required in order for Architect/Engineer to enter into this Agreement and perform its obligations under this Agreement that has not been obtained;
- C. Architect/Engineer is duly authorized to conduct business in and is in good standing in each jurisdiction in which Architect/Engineer will conduct business in connection with this Agreement; and
- D. Architect/Engineer has obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Architect/Engineer's performance of the services. Architect/Engineer will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

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

Architect/Engineer:

Recommended by:

_____	_____	_____	_____
	(DATE)	«SOSECaps»	(DATE)
(Print Name and Title)		«SOSETitle»	
«AEFirmCaps»		THE OFFICE OF THE STATE ENGINEER	
«AEAddress»			
«AECityStZip»			

Owner:

[Add/Delete any un-needed signature blocks]

State of South Dakota

_____	_____	_____	_____
«S1»	(DATE)	«S2»	(DATE)
«S1Title»		«S2Title»	
«S1DeptAgency»		«S2DeptAgency»	

_____	_____	_____	_____
«S3»	(DATE)	«S4»	(DATE)
«S3Title»		«S4Title»	
«S3DeptAgency»		«S4DeptAgency»	

Reviewed by:

[Add/Delete any un-needed review blocks]

[Initials]

[DATE]

«OSEPM», OSE: \_\_\_\_\_  
Required Documents Received

«R1», «R1Abbr»: \_\_\_\_\_

«R2», «R2Abbr»: \_\_\_\_\_

«R3», «R3Abbr»: \_\_\_\_\_

«R4», «R4Abbr»: \_\_\_\_\_

«R5», «R5Abbr»: \_\_\_\_\_

[If **ANY** language is changed BHRA legal needs to review/approve OSE PM to coordinate.]

**REPLACE PAGE WITH PROPOSAL**