



**SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY  
SANFORD UNDERGROUND RESEARCH FACILITY**

## **ORE HONDO FAN BACKUP**

**Contract #2021-13**

**GENERAL<sub>[TE1]</sub> CONDITIONS**

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## **ARTICLE 1 DEFINITIONS**

- 1.1 Owner:** South Dakota Science and Technology Authority
- 1.2 Contractor:** The person or entity identified as such in the Agreement for Construction, including authorized representatives.
- 1.3 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.
- 1.4 Contract Documents:** The Request for Proposal with Instructions to Bidders and attached Exhibits, the Plans, Drawings, and Specifications, and these General Conditions.
- 1.5 Contract (or Agreement):** The Contract Documents form the contract. The Contract may be amended or modified only in writing in the manner set forth in Article 13. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any Subcontractor, Sub-subcontractor or supplier.
- 1.6 Work:** The completed construction required by the Contract Documents, and every part thereof, including all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated into such construction.
- 1.7 Project:** The total construction of which the work performed under the Contract Documents may be the whole or a part.
- 1.8 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.
- 1.9 Specifications:** The written requirements for materials, equipment, construction systems, standards and workmanship.

## **ARTICLE 2 EXECUTION, CORRELATION AND INTENT**

- 2.1** By executing the Agreement for Construction, the Contractor represents that Contractor has examined the Contract Documents. 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.

**2.2** 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.

**2.3** Owner assumes no 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.

**2.4** 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.

**2.5** 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.

**2.6** Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the use as set out in the request for proposal consistent with the quality of the surrounding Work, of the construction of the Project generally, and industry standards.

**2.7** 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 Owner, 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 Owner. 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, with the exception of Contractor's subcontractors, who shall be bound by a Confidentiality Agreement, nor may the Contractor use these materials for purposes other than work for the Owner, without the express written approval of the Owner. The Owner 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, with the exception of Contractor's regular parts vendors and suppliers, without the express written permission of the Owner.

### **3.3 Return of Documents**

All documents covered by this Article 3 shall be delivered to the Owner at the completion of the Work. The Contractor may not retain any such documents for its own use, unless required for its internal recordkeeping purposes, without the express written permission of the Owner and any documents that are retained, with or without permission, shall be subject to all of the requirements of this Article 3.

### **3.4 Terms to be Included In Subcontracts**

The Contractor shall include the requirements of this 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<sup>[KR2]</sup>.

## **ARTICLE 4 OWNER'S RIGHTS AND RESPONSIBILITIES**

### **4.1 Information and Services Required of the Owner**

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

**4.1.2** 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.

**4.1.3** Unless otherwise provided in the Contract Documents, the Contractor will be furnished with electronic copies of the Drawings and Specifications necessary for the execution of the Work. If no electronic copies are available Contractor will be furnished with a reasonable number of prints of Drawings and Specifications, at no cost to Contractor.

**4.1.4** The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein.

**4.2 Owner's Right to Stop the Work:** If the Contractor fails to correct defective Work as required by Article 14 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 Owner, 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.

**4.3 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 five working days after receipt of written notice from the Owner or in such longer time as may be established in written notice from Owner to provide a corrective action plan acceptable to 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 it 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 reasonable, direct and substantiated cost of correcting such deficiencies, including compensation for Owner'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 reasonable 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, upon 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 five working days notice of its intent to do so. In any such case, an appropriate deductive Change Order shall be issued in accordance with Article 13, the amount of which shall not exceed an amount which equals the actual direct cost, including the Owner's fees, of performing the work which the Owner elects to perform and the proportionate amount of the Contractor's fee associated therewith.

**4.4 Owner's Right to Access for Observation or Other Work:** The Owner reserves the right of access to any part of the Work for the purpose of observation, or testing, or to install other work, either with its own forces or with separate contractors, however, Contractor shall not be responsible for any delays caused by such access by Owner or others. Access for the purposes of installing other work shall be given upon reasonable notice from the Owner. All other access shall be given immediately upon request. 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.

**4.5 Owner's Representative:** Owner's Representative on this project is:

Andrew Brosnahan, Project Engineer  
South Dakota Science and Technology Authority  
630 East Summit Street  
Lead, SD 57754  
Business: 605.722.4027  
abosnahan@sanfordlab.org

## **ARTICLE 5 CONTRACTOR'S RESPONSIBILITIES**

**5.1 Review of Contract Documents:** The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission Contractor may discover. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistency or omission Contractor may discover and report, nor for any damage resulting from any such errors, inconsistencies or omissions which Contractor could not reasonably have discovered. The Contractor shall perform no portion of the Work at any time without Contract Documents.

## **5.2 Supervision and Construction Procedures**

**5.2.1** 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. The Owner shall have no control over, or responsibility for, any such matters.

**5.2.2** Nothing contained in the Contract Documents shall be interpreted by implication or otherwise as a direction by 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 Contract Documents but such express reference shall in no way relieve the Contractor of its 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 Contract Documents, then the Contractor shall notify the Owner in writing of the actual means, methods, techniques, sequences and procedures which Contractor will employ on the Work if these differ from those expressly referred to in the Contract 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 Contract Documents.

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

**5.2.4** The Contractor shall not be relieved from Contractor's obligations to perform the Work in accordance with the Contract Documents by the use or occupancy of part of the Work by the Owner as provided in Article 4.4, by the performance of Work related to the Project by others as provided in Article 7.1, or by inspections, tests or approvals required or performed under Article 8.7 by persons other than the Contractor unless otherwise stated therein.

**5.2.5** 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 the 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.

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

**5.2.6.1** Coordinate Subcontractor's work with the dependent work;

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

- 5.2.6.3 Supply and/or install items to be built into dependent work of others;
- 5.2.6.4 Make provisions for dependent work of others;
- 5.2.6.5 Examine dependent drawings and specifications;
- 5.2.6.6 Examine previously placed dependent work;
- 5.2.6.7 Check and verify dependent dimensions of previously placed work;
- 5.2.6.8 Notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of Subcontractor's work; and
- 5.2.6.9 Not proceed with 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.

### **5.3 Labor and Materials**

**5.3.1** 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.

**5.3.2** The Contractor shall at all times enforce strict discipline and good order among Contractor's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him/her. The Contractor shall be responsible to maintain and observe, and to require the 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.

**5.3.3** Except in the event of emergency, no substantial field operations shall be performed outside of regular working hours without the prior approval of 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.

## **5.3.4 Substitutions**

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

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

**5.3.4.3** The Owner will be the sole judge of equivalency of proposed substitute products, materials, and equipment.

**5.3.4.4** If the Contractor desires to use a substitute item, Contractor shall make application to the Owner 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 review) stating and fully identifying the proposed substitute, cost changes (if any), and submitting substantiating data, samples, 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.

**5.3.4.5** Prior to proposing any substitute item, the Contractor shall satisfy itself that the item Contractor 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.

**5.3.4.6** The burden of proof that a proposed substitution is equal to a specified item shall be upon the Contractor, who shall support the request with sufficient test data and other means to permit the Owner 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.

**5.3.4.7** 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.

**5.3.4.8** Acceptance of substitutions shall not relieve the Contractor from responsibility for compliance with all the requirements of the Contract Documents. The Contractor shall be responsible at its own expense for any changes in other parts of the Work of this Contract or the work of other contractors caused by its substitutions, including cost of all design and redesign services related thereto.

**5.3.4.9** The Contract Term 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.

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

**5.3.5** 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.

**5.3.6** Before ordering materials, equipment, or performing Work, the Contractor shall verify indicated dimensions. If a discrepancy exists, the Contractor shall notify the Owner of same immediately. The Owner 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.

## **5.4 Guarantees/Warranty**

**5.4.1** 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 defects in equipment, material, design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier 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 Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. In addition to any other warranties in this contract, this warranty shall continue for a period of 1 year from the date of ~~final acceptance~~ final acceptance of the work. ~~.or not to exceed eighteen (18) months from delivery.~~ If the Owner takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Owner takes possession.

**5.4.2** 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 Article 5.4.1, whether the loss arises before or after the Owner's acceptance of the Project.

**5.4.3** Where the Contract Documents provide for equipment and material warranties in addition to the Contractor's guarantees and warranty contained in Article 5.4.1, such warranties shall at a minimum:

**5.4.3.1** 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.

5.4.3.2 Provide for ~~complete~~ repair or replacement of defective equipment or material, ~~as Owner's sole and exclusive remedy and Contractor's sole liability for such breach of warranty. Any warranty repair/replacement/re-performance pursuant to the above warranties shall be warranted by Contractor for a period equal to the remainder of the original warranty period set forth above. No "evergreen" or "in-place" warranty is being provided~~

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

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

5.4.3.5 Provide for the ~~complete~~ repair or replacement of defective equipment or material within ~~two~~ [TE3] ~~weeks a reasonable, mutually agreed upon period of time,~~ 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.

5.4.3.6 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 Article 5.4.3.5 or should the remedy of repair or replacement otherwise fail.

~~5.4.3.7~~ Be construed under South Dakota law. ~~THERE ARE NO WARRANTIES, CONDITIONS, GUARANTEES, REPRESENTATIONS, OR REMEDIES THAT EXTEND BEYOND THESE CONTRACT DOCUMENTS. ALL OTHER WARRANTIES, CONDITIONS, GUARANTEES, REPRESENTATIONS, OR REMEDIES EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY CONDITION OR WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE) NOT EXPRESSLY SET FORTH HEREIN, ARE FULLY DISCLAIMED AND EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. CONTRACTOR'S WARRANTIES DO NOT COVER ANY MATERIALS, EQUIPMENT, WORK THAT HAVE BEEN ALTERED OR SUBJECTED TO ACCIDENT OR IMPROPER STORAGE, INSTALLATION, ASSEMBLY, COMMISSIONING, MAINTENANCE, USE OR APPLICATION. CONTRACTOR DOES NOT WARRANT THAT THE MATERIALS, EQUIPMENT, WORK WILL RESIST THE ACTION OF EROSION OR CORROSIVE GASES, LIQUIDS, OR SOLIDS, OR PRODUCE RESULTS IN COMPLIANCE WITH ANY LAWS, DECREES, OR OTHER STANDARDS.~~

~~5.4.3.7~~

5.4.3.8 Provide that any legal action brought on the warranty shall be brought only as provided in Article 8.8 in a South Dakota court [KR4] [TE5].

~~5.4.3.9~~ ~~THERE ARE NO WARRANTIES, CONDITIONS, OR GUARANTEES, REPRESENTATIONS BEYOND THOSE, OR REMEDIES THAT EXTEND SET OUT IN THE BEYOND THESE THE CONTRACT DOCUMENTS. ALL OTHER WARRANTIES, CONDITIONS, OR GUARANTEES, REPRESENTATIONS, OR REMEDIES EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE (INCLUDING ANY CONDITION OR WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE) NOT EXPRESSLY SET FORTH HEREIN, ARE FULLY DISCLAIMED AND EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. CONTRACTOR'S WARRANTIES DO NOT~~

COVER ANY MATERIALS, EQUIPMENT, WORK THAT HAVE BEEN ALTERED OR SUBJECTED TO ACCIDENT OR IMPROPER STORAGE, INSTALLATION, ASSEMBLY, COMMISSIONING, MAINTENANCE, USE OR APPLICATION. CONTRACTOR<sup>[TE6]</sup> DOES NOT WARRANT THAT THE MATERIALS, EQUIPMENT, WORK WILL RESIST THE ACTION OF EROSION OR CORROSIVE GASES, LIQUIDS, OR SOLIDS, OR PRODUCE RESULTS IN COMPLIANCE WITH ANY LAWS, DECREES, OR OTHER STANDARDS.

5.4.3.85.4.4

**5.5 Taxes:** <sup>[TE7]</sup> 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.

**5.6 Permits, Fees and Notices**

**5.6.1** 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.

**5.6.2** 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 performance of the Work and shall indemnify the Owner against all costs, fines and damages, and all actions, claims and proceedings, due to its failure to do so.

**5.6.3** 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.

**5.6.4** 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, Contractor shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification.



**5.6.5** 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, Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

**5.7 Contractor's Representative:** The Contractor shall employ a competent Representative 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 Contractor's Representative shall represent the Contractor and all communications given to the Contractor's Representative 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 Contractor's Representative shall not be changed without the Owner's consent. The Contractor's Representative in this Project is

## **5.8 Shop Drawings, Product Data and Samples**

**5.8.1** Approval Drawings are general arrangement 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.

**5.8.2** 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.

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

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

**5.8.4.1** The Owner reserves the right to review Approval 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.

**5.8.4.2** 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 Approval Drawing, Product Data, Samples or related submittals according to the schedule or otherwise in a manner which does not allow adequate lead time for Owner's review, or does not allow ample time for revision, resubmission and subsequent review by the Owner as required.

**5.8.4.3** Composite Drawing: In the interest of coordinating and expediting the work in critical areas, i.e. exterior wall components, mechanical/electrical systems, and other areas so requested by the Owner, the Contractor shall prepare and submit, to the Owner 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.

**5.8.5** By approving and submitting Approval Drawings, Product Data and Samples, the Contractor represents that Contractor has determined and verified all materials, field measurement, and field construction criteria related thereto, checked the Approval Drawings, Product Data, and Samples for complete dimensional accuracy; that Contractor has checked to insure that work contiguous with and having bearing on the Work shown on the Approval Drawings is accurately and clearly shown, that Contractor has checked the Approval 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 Contractor has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**5.8.5.1** Any Approval Drawing, Product Data or Sample submitted without Contractor's approval will not be processed for review by the Owner, but will be returned to the Contractor for 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 Approval Drawing, Product Data and Sample had been submitted.

**5.8.5.2** Approval Drawings shall bear a coordination and approval stamp signed by the Contractor and each contiguous Subcontractor, which shall confirm the representations set forth in Article 5.8.5. Approval Drawings shall bear the seal of a registered professional engineer when required by the Specifications or state law.

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

**5.8.7** No portion of the Work requiring submission of an Approval Drawing, Product Data or Samples shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.

## **5.9 Use of Site**

**5.9.1** 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.

**5.9.2** 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.

**5.9.3** All operations shall be carried out so as to avoid endangering any adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof.

5.9.4 The Contractor shall confine operations at the site to work related activities.

## **5.10 Cutting and Patching of Work**

**5.10.1** 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.

**5.10.2** 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 its consent to cutting or otherwise altering the Work.

**5.10.3** Structural elements of the Work shall not be cut, patched or otherwise altered or repaired without prior written authorization by the Owner.

**5.10.4** 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 Contractor's right to require the removal and replacement of any Work which fails to fulfill the requirements of the Contract Documents.

## **5.11 Cleaning Up**

**5.11.1** The Contractor at all times shall keep the Site and related area free from accumulation of waste materials or rubbish caused by Contractor's operations. At the completion of the Work, Contractor shall remove all waste materials and rubbish from and about the Project site as well as 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.

**5.11.2** 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 as provided in Article 4.3 and the cost thereof shall be charged to the Contractor.

**5.12 Communications:** The Contractor shall forward all communications to the Owner through Owner's Representatives set forth in Article 4.5.

**5.13 Royalties and Patents:** The Contractor shall pay all royalties and license fees, and 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 : (i) when a particular manufacturer or manufacturers are specified; (ii) to the extent of designs or other intellectual property provided by Owner and/or (iii) to the extent that the goods/equipment is altered or combined by Owner in a manner causing the infringement .

## 5.14 Indemnification

**5.14.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner<sup>TE8</sup>, ~~and its consulting engineers, and their its~~ respective successors, agents and employees from and against all claims, damages, liabilities, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense is for: (1) ~~is attributable to~~ bodily injury, sickness, disease or death ~~to third parties;~~ or (ii) to injury to or destruction of tangible ~~third party~~ property (including the Work itself) ~~including the loss of use resulting therefrom~~, and (2) is ~~each to the extent~~ caused directly in whole or in part by any tortious act or ~~negligent~~<sup>TE9</sup> 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 Article 5.14.

**5.14.2** In any and all claims against the Owner, ~~or any of its consultants, and their its~~ 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 5.14 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' compensation acts, disability benefit acts, or other employee benefit acts.

**5.14.3** The Contractor agrees to defend, indemnify and save the Owner ~~or any of Owner's consulting engineers, and their its~~ 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 and Owner's 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 expenses of collection, occasioned in whole or in part by the failure of the Contractor, its Subcontractors, or Sub-subcontractors to comply with any of the terms or provisions of the Contract Documents.~~

~~5.14.4 Anything in the foregoing to the contrary notwithstanding, the Contractor's obligation to indemnify as set forth above shall include any claims, damages, liabilities, losses and expenses, including but not limited to attorneys' fees, arising out of related to the use by Contractor of any of Owner's equipment, and said obligation to indemnify shall arise regardless of any tortious act or omission, or lack thereof, by Contractor.~~

5.14.45.14.5 Any duty to indemnify under this Agreement is conditioned upon Owner: (i) providing prompt and detailed notice to Contractor of any such claim; (ii) tendering the defense/settlement to Contractor (subject to Owner's right to retain its own counsel at its own expense); and ~~Owner;~~ and (iii) providing full cooperation, ~~authority,~~ and assistance to Contractor.~~Owner.~~

## **5.15 Default**

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

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

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

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

**5.15.1.4** Contractor fails to coordinate its work with other contractors and Subcontractors as required under Article 7 of these General Conditions;

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

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

**5.15.1.7** 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.

**5.15.2** In the event of any material 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 direct, reasonable and substantiated costs, including but not limited to the Owner's fees, from amounts otherwise owing to the Contractor, or to terminate the Contract in accordance with Article 15.2 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.

## **5.16 Use of Owner's Equipment.**

**5.16.1** The parties acknowledge Contractor is not permitted to use any of Owner's equipment. However, if the Contractor uses Owner's equipment in connection with the Work, Contractor shall be responsible to use the equipment in a good and businesslike manner and consistent with the Owner's environmental, health and safety requirements and applicable law. If the equipment is damaged or destroyed while being used by Contractor or while in Contractor's care, custody or control, regardless of the cause or party responsible for the damage or destruction, Contractor shall repair or replace the equipment at Contractor's expense. Nothing in the foregoing shall require the Contractor to be responsible for ordinary wear and tear.

**5.16.2** If the Contractor's use or care, custody or control of Owner's equipment results in damage or injury to Owner's property or employees, Contractor shall be liable for any such damage or

injury, and Contractor shall promptly repair or replace the equipment so as not to interfere with Owner's operations.

**5.16.3** Prior to using or taking custody of any of Owner's equipment, Contractor shall provide proof reasonably acceptable to Owner that the Contractor's liability insurance will afford coverage for any claims arising out of Contractor's use or care, custody or control of Owner's equipment, and that Contractor carries property insurance that will cover Contractor's obligation to repair or replace Owner's equipment as provided herein.

**5.16.4** Nothing in this section 5.16 shall be construed to authorize Contractor to use Owner's equipment without Owner's prior written consent and upon such terms and conditions as Owner may require.

## **ARTICLE 6 SUBCONTRACTORS**

### **6.1 Definitions**

**6.1.1** 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 and means a Subcontractor or its authorized representative. The term Subcontractor does not include any separate contractor or its subcontractors.

**6.1.2** 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 and means a Sub-subcontractor or an authorized representative thereof.

**6.2 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.

### **6.3 Subcontractual Relations**

**6.3.1** The Contractor shall not include any provisions in its contracts with its Subcontractors which will in any way prejudice the rights of the Owner under the Contract between the Owner and the Contractor.

**6.3.2** 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.

**6.3.3** Nothing in Article 6 shall be construed to create a privity of contract between the Owner and any Subcontractor.

- 6.4 Notification of Subcontractors to Owner.** Contractor shall provide to Owner a listing of every Subcontractor that Contractor intends to employ on the Project and include: Company name, representative name, phone number, and email address.

## **ARTICLE 7 WORK BY OWNER OR BY SEPARATE CONTRACTORS**

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

**7.1.1** The Owner reserves the right to perform work related to the Project with its 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 Article 5.15.1 and whether or not the Owner has terminated the Contract under Article 15.2. 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 13. If the Contractor claims that the delay involved is because of action or inaction by the Owner, Contractor shall make such claim as provided elsewhere in the Contract Documents.

**7.1.2** The Owner will provide for the coordination of the work of its own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Article 7.2.

### **7.2 Mutual Responsibility**

**7.2.1** 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 its Work with theirs as required by the Contract Documents.

**7.2.2** 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 Owner 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 the Work, except as to defects which may subsequently become apparent in such work by others.

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

**7.2.4** 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.



**7.2.5** 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 an arbitration 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 or arbitration costs which the Owner has incurred.

**7.3 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 Site and related areas on a routine basis as required by Article 5.11, the Owner may clean up and charge the cost thereof to the contractors responsible therefor as the Owner shall determine to be just..

## **ARTICLE 8 MISCELLANEOUS PROVISIONS**

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

**8.2 Successors and Assigns:** The Owner and the Contractor each binds itself, its 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 it hereunder, without the previous written consent of the Owner.

**8.3 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.

**8.4 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 its employees, agents or others for whose acts it 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.

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

### **8.6 Rights and Remedies**

**8.6.1** 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 Article 14.2.2.

**8.6.2** No action or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty afforded either 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.

## **8.7 Tests**

**8.7.1** If the Contract 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 Owner timely notice of its readiness so the 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.

**8.7.1.1** Where certain testing and inspection requirements are set forth in the various sections of the Contract 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 Contract 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.

**8.7.1.2** 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 Contract 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 Contract Documents. In the event that the Contractor shall not concur with such modification of scope or re-allocation of such services, Contractor shall immediately notify the Owner in writing.

**8.7.2** If the Owner determines that any Work requires special inspection, testing, or approval which Article 8.7.1 does not include, Owner will, by written authorization, 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 Article 8.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, and the cost of retesting; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

**8.7.2.1** If Owner's observation or any inspection or testing undertaken pursuant to Article 8.7 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 Contract 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 Owner 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 Owner may

in its reasonable opinion consider necessary or advisable, and the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, and the cost of retesting made necessary thereby.

**8.7.3** Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered to the Owner.

**8.7.3.1** The Contractor shall obtain and deliver promptly to the Owner any certificates of final inspection of any part of the 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 Article 9.1.3, receipt of such permits or certificates by the Owner shall be a condition precedent to Completion of the Work.

**8.7.3.2** 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.

**8.7.4** If the Owner is to observe the inspections, tests or approvals required by the Contract Documents, Owner will do so promptly and, where practicable, at the source of supply.

**8.7.5** 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.

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

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

**8.7.8** 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 Owner that the Contractor or said agent has failed to perform such work in a satisfactory manner, the Contractor shall, at its own expense, retain the services of a service organization which is satisfactory to the Owner for the performance of such work.

**8.7.9** Contractor agrees to use the E-Verify System ([www.uscis.gov](http://www.uscis.gov)) to verify the employment eligibility of all employees assigned to this Contract and all new hires working in the United States, and to provide E-Verify documentation to the SDSTA within ten (10) days of execution of this Contract. If Contractor is a sole proprietorship with no employees, E-Verify is not required. Contractor further agrees to maintain an active registration, during the term of the Contract, with the System for Award Management ([www.sam.gov](http://www.sam.gov)).

**8.7.10** SDSTA is required by a Cooperative Agreement (CA) with the U.S. Department of Energy's Office of Science to control access to the facility by foreign nationals and to provide protection against any potential compromise of information, equipment or technology. In order to comply with these requirements, SDSTA has adopted a Foreign Access Policy and Foreign Access Procedure. The Contractor is responsible to ensure

compliance with the Foreign Access Policy and Foreign Access Procedure. Without limiting the generality of the foregoing, before a SURF visit or assignment can occur, proof of identity and citizenship are required for all foreign national visitors to verify the foreign national's identity and authority to work (when applicable for the activities involved) in the United States. If foreign nationals will be visiting SURF in association with this contract, the Contractor must notify the SDSTA Representative in advance to ensure compliance with SDSTA's Foreign Access Policy and Foreign Access procedure, and to with any other applicable DOE and SDSTA requirements. Failure to provide appropriate documentation when required, or providing fraudulent documentation, will result in suspension of access approval, removal from SURF, possible cancellation of future access, and possible termination of this Contract for cause. Any changes to the Foreign Access Policy, Foreign Access Procedure, or other DOE or SDSTA requirements implemented after the effective date of this Contract are hereby deemed incorporated into this Contract by reference without the need for a further writing.

## **8.8 Litigation/Arbitration**

**8.8.1** 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 by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of South Dakota. Notice of a request for arbitration shall be sent in writing to the other party to this Agreement within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall a request for arbitration be made after the applicable statute of limitations for such claim under South Dakota Law has run. If the party receiving the notice of request does not agree to arbitration in writing within 10 calendar days, it will be deemed that the parties do not mutually agree to arbitrate the matter. A request to arbitrate shall not be deemed a condition precedent to the institution of legal proceedings. If the parties agree to arbitrate, the provisions of SDCL Chapter 21-25A shall apply.

**8.8.2** The Contractor shall carry on the Work and maintain its progress during any dispute or arbitration 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 9 TIME**

### **9.1 Definitions**

**9.1.1** The Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Article 9.1.3, including authorized adjustments thereto.

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

**9.1.3** The date of Substantial Completion of the Work is the date certified by the Owner when construction is sufficiently completed in accordance with the Contract Documents so that the Owner can occupy and utilize the Project for the use as set out in the request for proposal, 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.

**9.1.4** The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

## **9.2 Progress and Completion**

**9.2.1** All time limits stated in the Contract Documents, including the Construction Completion Schedule, if applicable, are of the essence to this Contract.

**9.2.2** The Contractor shall begin the Work on the date of commencement as defined in Article 9.1.2. Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## **9.3 Delays and Extensions of Time**

**9.3.1** If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, or by any employee of the Owner, 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 overtime labor).

**9.3.2** Any claim for extension of time shall be made in writing to the Owner 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.

**9.3.2.1** 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.

**9.3.2.2** 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.

**9.3.2.3** The Owner shall have the right to defer its 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.

**9.3.2.4** Notwithstanding the provisions of Article 9.3.2, 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.

**9.3.2.5** 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 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 5 year average weather conditions. Time extensions for weather delays do not entitle the Contractor to "extended overhead" recovery.

**9.3.3** If no agreement is made stating the dates upon which interpretations 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.

**9.3.4** 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 [TE10] 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 Owner, added cost of engineering and supervision, and other items which have caused an expenditure of 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 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 its agents and employees from and against all costs, fees, losses, damages, and expenses arising out of such claims enforced against the Owner. The parties acknowledge and agree it would be impracticable or extremely difficult to fix the actual damages resulting from a delay in performance and that the amount provided for in the Agreement is an appropriate presumed damage.

**9.3.5** No extension of time will be granted to the Contractor for any delay other than those described in Article 9.3.1.

**9.3.5.1** Should the Contractor fail, refuse or neglect to supply a sufficiency of workers 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 its obligations under this Contract in any material respect, the Owner shall have the right to direct the Contractor, upon 3 day-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.

**9.3.5.2** 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.

**9.3.6** The Contractor's right to make a claim or claims for an extension of time, as provided in Article 9.3.1, 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.

## **9.4 Beneficial Occupancy**

**9.4.1** 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 Contractor in completing the entire Work. Such occupancy and use shall be further subject to the provisions set forth herein.

**9.4.2** In the event that the Owner desires to exercise the privilege of Beneficial Occupancy, Owner shall give reasonable notice to the Contractor. The Contractor shall then 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.

**9.4.3** The Owner's Beneficial Occupancy or use of such designated areas, subdivisions, or portions 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 its 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 10 PAYMENTS AND COMPLETION**

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

**10.2 Schedule of Values:** Before the first Application for Payment, the Contractor shall submit to the Owner 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 may require. The format and number of copies of such Applications for Payment shall be as directed by the Owner. This schedule, unless objected to by the Owner, shall be used as a basis for the Contractor's Applications for Payment.

### **10.3 Monthly Application for Payment**

**10.3.1** No later than the 3<sup>rd</sup> day of each month the Contractor shall submit to the Owner its 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, or on a form approved by Owner, and supported by such data substantiating the Contractor's right to partial payment as the Owner may require; including but not limited to receipts, releases, and waivers of liens.

**10.3.1.1** In applying for payment, the Contractor shall submit its 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 Contractor's 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.

**10.3.1.2** If the Contractor chooses to apply for payment for materials which cannot be incorporated into the Work, and cannot be stored on the site, Contractor 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 this Article 10.3.1.2. Contractor shall provide the Owner with bills of sale or such other documents as will establish the ownership of the materials.

**10.3.1.3** Reimbursement for pre-approved travel expenses, if any, will not exceed Federal Travel Regulations (FTR) standard rates for the applicable travel location. Lodging expenses will be reimbursed at FTR rates or the actual lodging cost, whichever is less; airfare shall be reimbursed at the actual cost of a coach class ticket. No additional burdens or overheads will be applied to travel expense reimbursements.

**10.3.1.4** Applications for payment should be addressed to:

South Dakota Science and Technology Authority  
630 East Summit Street  
Lead, SD 57754

and submitted to the Owner's Representative. A scanned/emailed Application for Payment is preferred, submitted to [AP@Sanfordlab.org](mailto:AP@Sanfordlab.org). Paper copies of Applications for Payment are not necessary.

**10.3.2** 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.

**10.3.3** Monthly applications received after the 3<sup>rd</sup> day of the month will be treated as if submitted on the 3<sup>rd</sup> day of the following month.

## **10.4 Progress Payments**

**10.4.1** Based upon the review of the Monthly Application for Payment, 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 15<sup>th</sup> of each month. The Owner shall at all times retain an amount sufficient to complete the Work. Contractor shall submit a lien waiver, in a form prescribed by and in accordance with applicable law, to the Owner following each Progress Payment.

**10.4.2** 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. Contractor shall require Subcontractors to submit lien waivers, in a form prescribed by and in accordance with applicable law, to Contractor following each Progress Payment to Contractor, and subsequent payments made to Subcontractors. Subcontractors' lien waivers to Contractor will be submitted to Owner.

**10.4.3** 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.

**10.4.4** The Owner shall have no obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

**10.4.5** 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.

## **10.5 Payments Withheld**

**10.5.1** The Owner may decline to certify the full payment of the amount requested by the Contractor in the monthly application to the extent necessary to reasonably protect the Owner. If the Owner is unable to certify payment in the amount of the Application, Owner will, within 10 days after receipt of the monthly application, notify the Contractor in writing the reasons a certification cannot be made. If the Contractor and the Owner cannot agree on a revised amount within 5 days of Owner sending written notice, the Owner will promptly issue a Certification for Payment for the amount for which certification may be made. The Owner may also decline to certify payment because of subsequently discovered evidence or subsequent observations. Owner may nullify the whole or any part of any Certification for Payment previously issued, and 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:

**10.5.1.1** Defective work not remedied;

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

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

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

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

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

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

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

**10.5.1.9** 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;

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

**10.5.1.11** Reasonable evidence that the Contractor is in material breach of its obligations under the Contract.

**10.5.2** When the above grounds in Article 10.5.1 are removed, payment shall be made for amounts withheld because of them.

## **10.6 Substantial Completion**

**10.6.1** When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is Substantially Complete as defined in Article 9.1.3 the Contractor shall prepare for submission to the 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 Owner on the basis of an inspection determines that the Work or designated portion thereof is Substantially Complete, the Owner 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.

**10.6.2** Upon Substantial Completion of the Work or designated portion thereof and upon application and certification by the Contractor, 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 may be retained by the Owner.

## **10.7 Final Completion and Final Payment**

**10.7.1** 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 Owner will promptly make such inspection and, if Owner determines that the Work has been completed in accordance with the

terms and conditions of the Contract Documents, the entire balance will be determined to be due and payable to the Contractor.

**10.7.2** The final payment shall not become due until the Contractor submits to the Owner (1) An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or will be paid with Owner's final payment to Contractor and that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests; (2) A general release executed by Contractor waiving, upon receipt of final payment by Contractor, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment, and an agreement to indemnify, defend and hold Owner harmless from and against any claims made by suppliers, Subcontractors, Sub-Subcontractors or others for work or material provided in connection with the Project or the Work; (3) All as-built documents, operating manuals, warranties and other deliverables required by the Contract Documents. All guarantees and warranties required by the Contract Documents shall include an assignment from the Contractor, Subcontractors, vendors, suppliers and manufacturers to the Owner, as well as a list of the names, addresses and telephone numbers of all subcontractors and any other entities providing these guarantees or warranties.

**10.7.3** 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 10.7.2 above.

**10.7.4** 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. After final payment, Contractor shall submit to Owner a final lien waiver in a form prescribed by and in accordance with applicable law.

## **ARTICLE 11 CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY**

**11.1** Contractor's Responsibility for Project Safety: Contractor's responsibility for project safety is attached hereto as Exhibit B, and incorporated herein by reference.

## **ARTICLE 12 INSURANCE**

**12.1** During the term of this Contract, Contractor shall maintain in effect at all times, and provide proof of such coverage to the Authority, insurance as described on the attached Exhibit A, which is incorporated herein by this reference.

**12.2** Prior to the commencement of work, Contractor shall submit a certificates of insurance policies to the Owner Authority for review and approval. If the Authority so requests, the Contractor shall facilitate a reasonable inspection by the Owner of the Contractor's insurance policies as required by this Contract.

**12.3** By executing this Contract, Contractor authorizes the Owner Authority to make direct inquiry of Contractor's insurer or insurance agent concerning the status of the insurance required by this Agreement. The Owner shall provide simultaneous notice of any such request to the Contractor.

## **ARTICLE 13 CHANGES IN THE WORK**

**13.1 Change Orders:** This Contract may be modified or amended only in writing in the form of a Change Order signed by both parties. 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 its agreement therewith.

**13.2** 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.

**13.3** 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:

**13.3.1** 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:

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

**13.3.1.2** 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.

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

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

**13.3.1.5** 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.

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

**13.3.1.6.1** 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).

**13.3.1.6.2** 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).

**13.3.1.6.3** Hourly rental rates determined from the 'Green Book' or 'Blue Book' includes all items of cost and expense to the Contractor, including, but not limited to, gas, oil, maintenance, repairs, insurance, and transportation to and from construction site.

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

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

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

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

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

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

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

**13.3.4** By the method provided in Article 13.3.1.1 through 13.3.1.11.

**13.3.5** 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 analyses shall be appended to the Contractor's itemized analysis of the proposed change in the Work.

**13.3.6** 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 Articles 13.3.1.1 through 13.3.1.11.

**13.3.7** 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.

**13.3.8** 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.

**13.3.9** 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.

**13.3.10** 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:

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

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

**13.3.10.3** Use of small tools.

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

**13.3.11** 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 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.

**13.3.12** If none of the methods set forth in Articles 13.3.1, .3.2 or .3.3 is agreed upon, the Contractor, provided it 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 Articles 13.3.3 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: (a) daily time slips, submitted to Owner on a daily basis, showing the name of each worker employed on such work, the number of hours which the worker is employed thereon, the character of the worker's duties, and the wages and benefits to be paid to the worker 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 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 Owner 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.

#### **13.4 Differing Site Conditions**

**13.4.1** The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Owner 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.

**13.4.2** The Owner 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 as provided in Article 13.1 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.

#### **13.5 Claims for Additional Cost**



**13.5.1** If the Contractor wishes to make a claim for an increase in the Contract Sum, Contractor shall give the 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 Approval Drawing or Sample submittals, in which case claim shall be made in writing to the Owner concurrently with such submittals. This notice shall be given by the Contractor before proceeding to execute the Work. 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.

**13.5.2** If the Contractor claims that additional cost is involved because of, but not limited to, (1) any order by the Owner to stop the Work pursuant to Article 4.2 where the Contractor was not at fault, or (2) any deviation in Shop Drawing or Sample submittals from the requirements of the Contract Documents, the Contractor shall make such claim as provided in Article 13.5.1.

## **ARTICLE 14 UNCOVERING AND CORRECTION OF WORK**

### **14.1 Uncovering of Work**

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

**14.1.2** If any other portion of the Work has been covered which the Owner has not specifically required to observe prior to being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the Owner or a separate contractor as provided in Article 7.1, in which event the Owner shall be responsible for the payment of such costs.

### **14.2 Correction of Work**

**14.2.1** The Contractor shall promptly correct all Work rejected by the Owner as defective or as failing to conform to the Contract 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 Owner's additional services and the Owner's fees made necessary thereby.

**14.2.2** 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 Contract 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.

**14.2.3** 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 Articles 5.4.1, 14.2.1 and 14.2.2, unless removal is waived by the Owner.

**14.2.4** If the Contractor fails to correct defective or non-conforming Work as provided in Articles 5.4.1, 14.2.1 and 14.2.2, the Owner may correct it in accordance with Article 4.3.

**14.2.5** 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 Owner, 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. 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.

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

**14.2.7** 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 Article 5.4 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 its 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 Contractor's obligations other than specifically to correct the Work.

**14.3 Acceptance of Defective or Non-Conforming Work:** If the Owner prefers to accept defective or non-conforming Work, Owner 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 15 TERMINATION OF THE CONTRACT**

**15.1 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,

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, other than non-payment. Any such termination shall not act to deprive Owner of any right or remedy otherwise existing under the terms of the Contract.

## **15.2 Termination by the Owner**

**15.2.1** If the Contractor is in material 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 its surety 10 calendar days written notice, during which the Contractor and/or its 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 it 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.

**15.2.2** If the costs of finishing the Work, including 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.

**15.2.3** 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.

### **15.3 Termination for Convenience**

**15.3.1** 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, plus reimbursement for its Direct Costs. For the purposes of this subsection, the term direct costs means such direct costs borne and incurred by the Contractor in connection with the Contract up to and including the date of suspension and/or cancellation, including but not limited to manufacturing costs, salaries, third party supplier costs and reasonable overhead and profit margin. In no event may Direct Costs plus other amounts already paid under the Contract exceed the Contract Sum set out in the Agreement. 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.

**15.3.2** 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.

116. Contractor's total liability pursuant and/or related to this Agreement whether for breach of contract or by reason of any tort (including negligence), statute, warranty, indemnity, or otherwise, shall in no event exceed the total Contract Sum.

117. Notwithstanding anything to the contrary contained herein or elsewhere in this Agreement, Contractor shall not be liable for any loss of profit or revenue, loss of business, loss of contracts, or for any indirect, economic, incidental, consequential, or punitive damages or losses, whether based on contract, warranty, indemnity, statute, tort, or otherwise pursuant and/or related to this Agreement.

118. Owner's rights and remedies shall be deemed sole and exclusive, and in place of those at law and equity. The exclusions and limitations set forth in this Agreement shall control at all times and survive any breach, or termination of this Agreement. If any provision of these terms and conditions of this Agreement or part thereof shall be held by judicial determination to be invalid or unenforceable they shall be severed from this Agreement and the valid or enforceable parts of these terms and conditions shall continue in full force and effect

## EXHIBIT A

### INSURANCE REQUIREMENTS

A. Minimum Insurance: Prior to commencement of Work, Contractor will procure and maintain the following insurance:

1. Commercial general liability insurance with limits of liability not less than \$5,000,000 per occurrence, \$5,000,000 general aggregate, and \$5,000,000 products/completed operations covering bodily injury, property damage, and personal injury and advertising injury. Such insurance shall name as additional insureds Barrick Gold Corporation, Homestake Mining Company of California, and the Affiliates of Barrick and Homestake and each of its and their representatives; the South Dakota Science and Technology Authority, its officers, agents, employees and representatives; and the United States of America. All additional insureds coverage must include current and completed operations.

2. Business automobile liability insurance with limits not less than \$1 million per occurrence

3. Professional liability coverage with limits not less than \$1 million per claim. If professional liability coverage is required, coverage shall be maintained for a period of no less than three years after completion of the work under the agreement or, if policy is cancelled, extended reporting period to equal the same.

4. Workers' Compensation and Employers' Liability covering payment of workers' compensation benefits for injury, death, occupational disease, or hearing loss as provided by South Dakota law, secured by workers' compensation insurance or by self-insurance or other means permitted under SDCL Ch. 62-5 which is acceptable to the Authority along with Employers' Liability limits of \$1,000,000 per accident, \$1,000,000 each employee by disease, and a policy limit of \$1,000,000 by disease.

B. Special Provisions Applicable to All Coverages: Self-insured retentions and/or deductibles greater than \$50,000.00 must be declared and approved by the Authority.

C. Special Provisions Applicable to the Commercial General Liability Insurance: The commercial general liability policy shall:

1. Provide contractual liability coverage at least as broad as Insurance Services Office (ISO) form CG00 01 or its equivalent. and CA 00 01 with regard to automobile liability coverage, or its equivalent.

2. Waive the insurer's right of subrogation against the Homestake Indemnified Parties.

3. State that it is primary and shall apply without consideration for other policies carried by the Homestake Indemnified Parties.

D. Notice of Cancellation or Material Change in Coverage/Condition: The Contractor or Project Sponsor must provide 30 days' notice of cancellation/material change.

- E. Evidence of Insurance: Prior to commencement of Work, the Contractor or Project Sponsor shall furnish the South Dakota Science and Technology Authority with certificates evidencing compliance with the insurance requirements above.
- F. Acceptability of Insurers: Insurance shall be placed with insurers acceptable to the South Dakota Science and Technology Authority.
- G. Subcontractors: Contractor shall require subcontractors to provide insurance that complies with the requirements stated herein.

## **EXHIBIT B**

### **ENVIRONMENT, HEALTH AND SAFETY REQUIREMENTS**

#### **CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY**

1. Contractor recognizes the importance of performing the work in a safe and responsible manner so as to prevent damage, injury, or loss to individuals, the environment, and the work itself, including materials and equipment incorporated into the work or stored on-site or off-site. Contractor assumes responsibility for implementing and monitoring all Environment, Safety and Health (ESH) precautions and programs related to the performance of the work.
2. Contractor and Subcontractors shall comply with all legal and Owner-specific reporting requirements relating to ESH set forth in the Contract Documents. Contractor will immediately report orally, and in writing within one (1) day, any ESH related injury, loss, damage, or accident arising from the work to Owner's Representative and, to the extent mandated by legal requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the work. Contractor and its Subcontractors will immediately report to the Owner's Representative all non-incidentals spills, and all other significant impacts to the environment (soil, water, air) in performance of the work. Contractor will also immediately notify the Owner of any failure to comply with state and federal environmental laws, rules, and regulations.
3. Contractor's responsibility for ESH under this Article is not intended in any way to relieve Subcontractors and Sub-subcontractors of their own contractual and legal obligations and responsibilities.

#### **ESH Requirements and Coordination**

4. Safety and protection of the environment are of the utmost concern on this Contract. Safety in this context refers to the health and safety of people and the protection of the environment. Nothing contained herein relieves the Contractor from complying with all applicable standards and regulations found in 29 CFR Part 1926 (the OSHA construction standard), 40 CFR Parts 261-265 (solid and hazardous waste management), 40 CFR Part 112 (oil pollution control), and ARSD 74:52:01 through 74:52:11 (storm water), as applicable. Site specific safety requirements are defined in the "Contractor Safety Policy," located at: <http://sanfordlab.org/ehs/manual/22-construction-ehs-manual-policy>. MSHA compliance may be acceptable after review.
5. The Contractor will address the safety requirements defined herein and in the Owner's Contractor Safety Policy. Contractor costs associated with the implementation of the requirements will be borne by the Contractor. Safety deficiencies discovered after the award will be remedied at no cost to the Owner and may at the Owner's discretion be deducted from the Contract amount.
6. The Contractor shall have an ESH Representative (also known as Safety Officer or SO), approved by the Owner, present on the Project at all times when work is physically being performed. The SO may have other minor duties, but the position's primary role is to oversee safety of the worksite and work being performed by the Contractor, as well as that of its Subcontractors. If shift work will be utilized, the Contractor must have a SO for each shift. In the case of shift work, the Contractor will designate one SO as the lead for the project. The training requirements for the second SO are the same as the lead and are as follows:

- The SO shall have 30-hr OSHA training or equivalent, with documented experience as a SO under similar conditions. Underground safety experience and training (e.g. MSHA part 48) is highly desirable.
- The SO shall have the authority to stop work.
- The SO will be certified in CPR and First Aid.
- The SO is responsible for administering the Contractor's ESH program.
- In addition to routine daily inspections, the SO will conduct a documented weekly ESH inspection of the work site.
- The SO will escort the Owner's ESH staff on a monthly ESH inspection, conducted by the Owner's ESH staff.
- The SO must be trained with respect to 40 CFR Part 112 (oil pollution prevention), 40 CFR Part 261- 270 (solid and hazardous waste management), and ARSD 74:52:01 through 74:52:11 (storm water), if applicable.
  - The Contractor will supply a weekly ESH report to the Owner, detailing any ESH related items, including OSHA recordable injuries, first aid cases, environmental releases, near misses, and a copy of the weekly ESH inspection.

7. The Contractor shall have on site at all times when work is being performed at least one individual certified in CPR and First Aid in addition to the SO.

8. The Contractor, if performing work underground, must have an individual trained and qualified as a Guide for each area that the contractor will be working. The Guide must be onsite with the workers at all times that workers are underground.

9. The Contractor must have a documented Site Specific Contractor Environment, Health and Safety Program (CEHSP) in place and accepted by the Owner before work will be authorized to start. This program must be consistent with the requirements in the Owner's Contractor Safety Policy. This plan shall:

- Incorporate the requirements identified in the Contractor Safety Policy.
- Include an Area Hazards Analysis.
- Contain a Job Hazard Analysis (JHA) for each definable work element.

The CEHSP will be based on the hazards inherent to the Means and Methods adopted by the Contractor and its associated work environment. The scope of work will dictate the required program elements for this Contract. The following are examples of program elements that the Contractor may include in its CEHSP:

- Electrical Safety
- Fall Protection
- Personal Protective Equipment (PPE)
- Control of Hazardous Energy (Lock Out/ Tag Out)
- Confined Space
- Hotwork (Grinding and Burning)
- Hoisting and Rigging
- Hearing Conservation (Includes Industrial Hygiene Monitoring and Medical Baselines, if appropriate)
- Respiratory Protection (Includes Industrial Hygiene Monitoring and Medical Baselines, if appropriate)
- Emergency Response
- Fire Protection and Prevention (Contractor must provide its own extinguishers)
- Blood Borne Pathogens



- Hazardous Communications
- Machine Safeguarding
- Powered Industrial Trucks
- Industrial Hygiene
- Material Handling
- Spill Prevention, Control, and Countermeasures (Contractor to provide all associated equipment)
- Storm Water Management
- Solid and Hazardous Waste Management
- Air Pollution Control
  - Scaffolding

If the Contractor chooses to adopt one or more specific elements of the Owner’s ESH program, it must adopt that element in its entirety.

10. The Contractor is expected to follow a Work Planning and Controls process that is aligned with the Owner (See SURF website ESH Manual at <http://sanfordlab.org/node/3402>). The Work Planning and Controls process must be conducted and documented prior to the start of work. The Work Planning and Controls process follows these steps and is documented in the form of a Job Hazards Analysis (JHA):

- Define the scope of the work.
- Analyze hazards in a step by step fashion.
- Develop and implement hazard controls and regulatory compliance.
- Perform the work and monitor the effectiveness of the hazard controls.
- Provide feedback to improve the process (e.g. routine workplace inspections, auditing compliance during work performance, job briefing postings, lessons learned, etc.).

A JHA, acceptable to the Owner, must be completed and reviewed with the individual expected to perform the work prior to work starting on a specified task. The SO is expected to review all JHAs. Copies of JHAs must be present at the location where work is being performed and accessible to the individuals performing the work and to Owner representatives.

11. The Contractor will conduct a crew work planning meeting (tailgate/toolbox talk), including, when necessary, Subcontractor employees, prior to the beginning of each shift. This talk will include the plan of work for the day, a review of hazards and potential regulatory issues, inspection/removal of loose puncture hazards as part of a general cleanup requirement of the work area, and the review of applicable JHAs.

12. The Contractor is responsible for identifying the need for Qualified and/or Competent Persons for specific tasks as defined in 29 CFR 1926.

13. Contractor shall provide all common Personal Protective Equipment (PPE) required for the work (hard hats, safety toe boots, safety glasses and fall arrest with suspension trauma safety straps) unless otherwise stated in the Scope of Work. Owner shall notify the Contractor in the Notice to Proceed of its intent to reduce the contract value if Owner elects to provide this PPE.

Unique PPE required for any *underground work* at a minimum includes:

- W65 Self Rescuers (must be maintained according to MSHA requirements) (always required when working underground)
- Gas Tester(s) (M40M or equivalent) (will be required for all underground work)

- Cap lamps are required

14. The Contractor is responsible for screening all Subcontractors with respect to safety and to adopt a safety selection process consistent with requirements defined herein. In addition, Contractor is responsible for flowing down all ESH requirements of the Contract to its Subcontractors, including monitoring and enforcing compliance.

15. The Contractor is responsible for assuring that all Contractor employee safety training is completed in compliance with Owner guidelines, policies and associated regulations. The following training is required for all Contractor personnel before they start work:

- Documented compliance with OSHA 1910 and 1926 along with training requirements as applicable. (Note that current MSHA training certification may also be acceptable.)
- Site Specific and the Sanford Underground Research Facility (SURF) Surface and/or Underground Orientation Training, provided by SURF
- Any other training requirements identified by the Contractor in its CEHSP or by the Owner and communicated to the Contractor, during the bid process and Site Specific ESH Program review.

16. If the Owner perceives the Contractor has created or is exposed to an imminent danger, unacceptable risk or a non-compliance situation, the Owner will suspend work until safe conditions are re-established. Such work stoppages will be at the expense of the Contractor and will not add time to the completion date of the Contract.

17. In the event of an incident, Contractor will notify Owner immediately and never later than the end of shift. Contractor shall conduct an incident investigation in accordance with the Owner's policies. The investigation will include preparing a written report summarizing the results of the investigation, corrective actions taken to prevent a reoccurrence, and any lessons learned. The Owner may at its discretion participate in and facilitate the incident investigation. Time and expense incurred by Contractor performing an incident investigation will be at the Contractor's expense.

18. The Contractor may with the Owners written permission operate SURF owned equipment, the Incidental Operator must first meet SDSTA requirements for operation of said equipment. The Contractor shall regularly inspect, test, and calibrate as necessary all equipment, machinery, tools, or other items furnished by the Owner that are employed in Contractor's work. Contractor shall take reasonable precautions to avoid damage to facility structures and utilities. If apparent defects are found in Owner-provided materials or equipment, defective equipment shall be taken out of service and Contractor shall promptly notify Owner of such defect(s) in writing. Contractor provided equipment shall be inspected and maintained prior to arriving on-site and before each use. Failure of Contractor provided equipment shall not be entitled to any compensation for downtime or delays or schedule extensions.

19. The Contractor shall manage all waste in performance of the work in compliance with Owner's Policies and Procedures and state and federal law. Further, the Contractor shall minimize the generation of all wastes and hazardous substances. All disposal and clean-up cost of spills of hazardous substances and non-hazardous debris/waste generated by the Contractor in the performance of the work will be at the expense of the Contractor.

20. Flammables (defined in 30 CFR Part §57.4460 Storage of flammable liquids underground.) are not allowed underground. Flammables used on the surface are to be stored in engineered flammable cabinets or in containers with a minimum 1-hour fire resistance.

- Combustibles in the underground work areas shall be managed as per 30 CFR Part 57.4104 - 57.4531; as applicable.

21. All chemicals to be used at the Owner's facility must be approved by the Owner and Safety Data Sheets (SDS) must be maintained by the Contractor and be readily available to workers on site.

22. Tier 4 engines are required on the Owner's site for underground use. Lower Tier equipment may be allowed on site but only with Owner's permission. All underground diesel equipment must be approved by the Owner prior to usage. An equipment list with associated Tier designations and fuel types provided to the Owner in the bid package.

23. Smoking, use of tobacco products, alcohol, controlled substance or weapons are not allowed within the boundaries of the Owner's facility. All property owned and operated by the SDSTA is designated as tobacco-free. This applies to all areas of the surface and the underground. The Contractor shall manage and maintain a drug and alcohol policy that aligns with that of the Owner's written policy and procedures. ESH department review of this document may be required.

24. Contractor acknowledges that periodic evacuation drills and exercises are required by Owner to validate the adequacy and effectiveness of Owner's Emergency Response Plan. Contractor also recognizes that such drills and exercises enhance its employees' understanding of Owner's Emergency Response Plan. Contractor agrees to participate in quarterly evacuation drills, which may or may not be scheduled in advance, during the term of this Contract. It is understood that Contractor will not be entitled to any additional compensation for participating in these evacuation drills or exercises.

25. Contractor agrees to assess whether Contractor's employees have the physical, mental, and emotional capacity to perform assigned tasks competently, and in a manner that does not unreasonably threaten safety, health, or property, including participation in emergency procedures applicable to Contractor's work location.

26. Owner reserves the right to restrict or deny access of any Contractor employee to the work location.

27. Contractor shall report the hours worked on site by Contractor's employees on a monthly basis to ESH Safety Coordinator Michelle Andresen ([mandresen@sanfordlab.org](mailto:mandresen@sanfordlab.org)) and to the SDSTA Representative named in the Contract. Hours should be emailed to both Ms. Andresen and the SDSTA Representative no later than the 3<sup>rd</sup> day of the month for hours worked the previous month.

## **EXHIBIT C SCOPE OF WORK**

This is a design-build project for the purchase and installation of a new backup underground ventilation fan and electrical infrastructure upgrades required to support the new and existing fans at the OHFC. Because these upgrades are all tied so closely together, SDSTA is requesting that the entire project be completed turn-key by a offeror capable of performing, through in-house resources or by coordinating subcontractors, the design, fabrication, on-site construction/installation, and commissioning of this backup fan system and supporting infrastructure. The selected offeror must follow the guidelines and requirements listed in this RFP and the attached documents. The offeror's submitted package must include all items required to complete this project (design, procurement, & installation).

The scope of work interested offeror's will be responsible for consists of the following five parts:

1. Evaluating existing conditions (section 3.0)
  - a. Current Oro Hondo fan site and configuration
  - b. Electrical distribution to the site
2. Oro Hondo Fan Site Design Requirements (Section 4.0)
3. Backup fan selection (section 5.1)
  - a. Select a proposed backup fan
4. Electrical distribution changes (section 5.2)
5. Procurement, installation, and commissioning of all items associated with this project (section 5.0)

### **1.0 Existing Conditions**

#### **1.1 Power Distribution**

OHFC site power is supplied on overhead lines from the nearby Oro Hondo Substation, which is owned and operated by SDSTA. The substation is supplied at 69kV by Black Hills Energy.

Two transformers located at the substation are dedicated to the OHFC and step 69kV down to 2400 volts. The 2400-Volt distribution system is an ungrounded delta-delta system. A manually operated source-transfer switch on the secondary side of the transformers, located at the substation, selects which transformer is in-use. The transformers cannot be operated in parallel.

The length of the 2400-Volt overhead line from the metal clad switchgear at the Oro Hondo Substation to the OHFC is approximately 400 feet (to be verified by the contractor).

A complete power distribution diagram of the Oro Hondo 2400-Volt system and OHFC is shown in Exhibit 3. Exhibit 4 contains photographs of transformer nameplates.

#### **Transformer Data:**

##### Main transformer –

GE, Delta-Delta, Rated 3,000 kVA continuous @ 55 °C Rise, self-cooled, oil.  
67kV primary (+/- 5%), 2400-Volt secondary,

Impedance = 9.01%, K-factor = 4  
BIL: HV = 350kV, LV = 110kV.

Backup transformer –

Westinghouse, Delta-Delta, Rated 2,500 kVA continuous @ 55 °C Rise, self-cooled, oil.  
67kV primary (+/- 5%), 2300-Volt secondary.  
Impedance = 7.4%  
Available short-circuit kVA = 32,000.  
BIL: HV = 350kV, LV = 60kV.

Note: The Westinghouse back-up transformer was upgraded to 125% of original self-cooled nameplate rating.

## **1.2 Primary and Secondary Fan Motors**

### **1.2.1 Primary American Davidson**

The American Davidson motor is the original GE 3000 horsepower synchronous motor with brushless exciter that was installed in 1986. The motor is housed in a weather-proof building and has been maintained regularly since it was originally installed. It was disassembled, cleaned, and tested in 2009.

Exhibit 2 provides pages from the original GE HMC project document “GEK-95638 *Adjustable Speed Drives Systems*” that contain information and specifications for the existing motor, and exciter along with photographs of motor and exciter nameplates.

### **1.2.2 Secondary Spendrup**

The Spendrup motor is a 350-horsepower induction motor. The motor is housed inside the vane-axial fans ducting. Photographs of the motor’s nameplate can be found in Exhibit 6.

## **1.3 Primary and Secondary Fan Control Buildings**

### **1.3.1 Primary American Davidson**

The American Davidson VFD is housed in an insulated modular motor control E-house. The E-House contains the VFD, and all lighting, heating, cooling and support equipment required to operate the VFD. Exhibit 5 provides detailed information on the E-house and equipment inside. VFD ratings for the American Davidson fan are provided in **Appendix A**.

### **1.3.2 Secondary Spendrup**

The Spendrup VFD is housed in an uninsulated legacy metal building containing other leftover drives and motors from HMC that no longer function. The building contains the Spendrup’s VFD, building lighting, heating, and hoist controls for the fan duct block off gates. Figure 4.1 provides a breakdown of the electrical equipment inside this building.

## **1.4 Primary and Secondary Fans**

### **1.4.1 Primary American Davidson**

The SURF ventilation system operates continuously 24 hours/day, 365 days/year. The primary Oro Hondo fan is an American Davidson type 1400-SIBAB92, single inlet, backward inclined airfoil blade impeller, centrifugal fan direct coupled to a 3000 HP, 720 RPM synchronous motor controlled by a 2000 HP PWM Allen-Bradley Powerflex 7000 medium voltage VFD.

#### 1.4.2 Secondary Spendrup

The secondary Spendrup fan will only run in the event the primary fan needs maintenance or experiences an unexpected outage. In the current configuration, the Spendrup produces 144 KFCM @ 4.1 in. w.g. through the same ventilation pathways as the American Davidson.

### 1.5 PLC Control System

A General Electric 90/30 PLC cabinet is currently installed inside the American Davidson Fan E-House to monitor instruments and fans at the OHFC.

### 1.6 Communication Network

SDSTA's IT Department manages, maintains, and secures the network infrastructure, servers, and SURF issued computing devices. The physical network infrastructure consists of a fiber-optic backbone plant that extends through-out the surface and underground facilities. The network architecture integrates separate logical networks into a facility-wide office automation network. Each logical network is isolated from the others through firewall zones. The telephone system consists of both wired digital and VoIP telephones.

Telephone service, office automation and control system networks are available at the OHFC site over fiber-optic cables.

### 1.7 Site Access Restrictions

Access to the OHFC is provided by Kirk Road that runs along the City of Lead boundary. Equipment and materials can access the OHFC from the East or West entrances. Kirk Road is wide enough to handle any widths that can travel normal highways. However, there are two pipe bridges that cross the road that can limit the maximum height of shipped loads depending on the chosen East or West route. The East and West pipe bridges are shown in **Figure 3.0**.

Exhibit 8 and 9 contain the recent laser scans of both bridges. The offeror will be responsible to review these scans and ensure all loads and equipment delivered to the OHFC are within the height restrictions of these bridges.



Figure 3.0 – OHFC Pipe Bridge Height Restrictions

Additionally, all loads that are shipped to the OHFC must travel on the short single lane OHFC access road that connects the OHFC to Kirk Road shown in **Figure 3.0**. Kirk Road is maintained by the City but the offeror will be responsible for maintaining the OHFC access road during this project to allow for equipment to be delivered and work to take place at the OHFC. Road maintenance may include snow removal, grading, or clearing to allow equipment to arrive at the OHFC.

Access to the back of the OHFC is provided by a very narrow road between the OHFC perimeter fence and tree covered embankment shown in **Figure 3.1**. The offeror will be responsible for maintaining this path, if needed, and any work required to allow equipment or loads to travel on this path. Modifications/work may include clearing, fence removal, or grading depending on the level of access needed.





Figure 3.1 – OHFC Access Roads

## 2.0 Oro Hondo Fan Site Design Requirements

Provide a complete and integrated design for the purchase and installation of a new backup underground ventilation fan and electrical infrastructure upgrades required to support the new and existing fans at the Oro Hondo fan site and all other aspects described in this scope of work.

- 2.1 All scope items shall be developed, designed, and presented as a single, all inclusive, integrated design package.
- 2.2 Design reviews are required at 30, 60, and 90% completion. A review meeting shall be held at each of these design milestones. Draft design documents shall be submitted at least 7 days prior to each review meeting. Review meeting attendance shall include SDSTA, the successful offeror and their key subcontractors. The SDSTA will have a total of 14 calendar days to provide comments. The 30% and 90% design reviews shall have key offeror leaders present at the SURF with support personnel allowed to videoconference. The 60% may be done entirely by video conferencing.
- 2.3 The 30% design documents shall include at a minimum:
  - 2.3.1 A Basis of Design (BOD) report including:



- 2.3.1.1 A separate section for each major component of the work scope providing assumptions, calculations, and design data from which the design is based.
      - 2.3.1.2 A section describing the approach to integrating all scope of work components into a single final design package.
    - 2.3.2 A drawing set including general arrangement, mechanical, electrical, plumbing, controls, and civil/structural drawings including all project/equipment specifications for each division of work on the project.
- 2.4** The 60%, 90%, and 100% design documents shall include at a minimum:
  - 2.4.1 A memorandum describing key changes from the previous deliverable.
  - 2.4.2 Updated design report including responses to all comments provided in the previous deliverable.
  - 2.4.3 Draft commissioning plan, with final plan delivered with the 100% deliverable.
  - 2.4.4 A drawing set including general arrangement, mechanical, electrical, plumbing, controls, and civil/structural drawings including all project/equipment specifications for each division of work on the project.
  - 2.4.5 Estimate for design support services for construction for RFI's, differing site conditions, submittal reviews etc. This estimate should include projected hours and rates by discipline.
- 2.5** All requests for information (RFI) shall be formally documented in Submittal Exchange and managed by the Offeror. See Exhibit 12 for details.
- 2.6** Calculations and final drawings shall be approved, certified, and stamped by a Professional Engineer registered in the state of South Dakota.
- 2.7** All dimensions shall be in US Customary System (USCS) units unless specified otherwise.
- 2.8** All instructions, labels, name plates, placards, warning signs, drawings, documents, and other submittals shall be in English.
- 2.9** Requirements to be used during design are as follows:
  - 2.9.1 The SURF site follows the Occupational Health and Safety Administration (OSHA) codes and standards. The codes and standards listed below shall also be followed where applicable. For items that OSHA and/or the IBC do not address, MSHA rules are referenced. If conflicts exist between code requirements, or in situations where no defined codes exist, consultation with SDSTA, who shall be the deciding authority concerning design standards and/or code variances. Codes and standards include but are not limited to the following:
    - ASHRAE (American Society of Heating, Refrigerating and Air- Conditioning Engineers)
    - ASME (American Society of Mechanical Engineers)
    - ASTM (American Society for Testing and Materials)
    - AWS (American Welding Society)
    - City of Lead Authority Having Jurisdiction

- Code of Federal Regulations (CFR), Mine Health and Safety Administration (MSHA), 30\_CFR\_56.12 (Surface Electricity)
- International Building Code (IBC)
- National Electric Code (NEC)
- National Fire Protection Association (NFPA)
- OSHA (Occupational Safety and Health Administration)
- ACI (American Concrete Institute)
- AISC (American Institute of Steel Construction)

### **3.0 Fabrication, Procurement, and Installation**

The scope of work associated with this project requires interested offerors to provide turn-key solutions for the following features of work and all ancillary items associated with them:

- Specification development for all installed equipment and structures
- New backup fan design, & procurement
- Fan site preparation, excavation, installation, and commissioning
- Electrical distribution reconfiguration.

Offerors submitting proposals should view the following requirements as guidance that should be addressed in design development. Various proposed solutions will be considered as long as the following requirements are met. Note that some additional information is provided for the contractor to consider as part of the RFP response.

### **3.1 Backup Fan Design and Procurement**

This portion of work will require the offeror to evaluate the existing configuration (as described above) of the OHFC to design and purchase a new backup fan. This will require the following items:

- Evaluation of the existing site configuration and limitations to determine the optimum placement and connection of the new backup fan.
- Selection of a new backup fan that meets the attached fan specification, see Appendix B. A list of potential fan vendors is provided for offerors information. Using one of these vendors is not a requirement.
- Design of the fan and ducting to function with the Oro Hondo exhaust shaft that is shared with the existing American Davidson fan.
- Procurement of the fan and necessary ducting

#### **3.1.1 Fan Specification**

The SDSTA has contracted with Ventilation Innovation (VI) to develop a backup fan specification that will meet SURFs needs based on VentSim modeling of the underground ventilation flow path. VI has created a detailed fan specification that all supplied backup fans must meet at a minimum. The backup fan specification

is attached to **Appendix B**. Additionally, all industrial controls supplied with this fan must follow SDSTA industrial controls design standard provided in Exhibit 10.

### 3.2 Fan Installation

Offerors will be responsible for the installation of the procured fan and ducting. Fan installation shall include the following items:

- Evaluation of the existing site conditions and infrastructure
- Site modifications needed for the backup and existing American Davidson fans to operate. Including but not limited to:
  - Demolition of existing ductwork, structures, or concrete that conflict with the new fans design
  - Demolition of the red, blue, and purple areas outlined in **Figure 5.0**
  - Any excavation and site preparation needed to support the new fan, ducting, or ancillary equipment that is part of the fan package. This may include foundations, equipment pads, or buildings
- Installation of the Fan Installation Package
- Commissioning of the fan per the fan specification supplied by VI and any additional manufacturer requirements.

#### 3.2.1 OHFC Construction Boundary and Constraints

Offeror's, interested in submitting turn-key proposals on this project must work within the allowed construction boundary that circles the perimeter of the OHFC. The construction perimeter is circled in yellow on **Figure 5.0**. Additionally, all submitted proposals must take into consideration the following information provided on the shaded regions:

**Yellow Boundary:** The allowed construction boundary for this project. Offerors can outfit this area with a backup fan and electrical equipment as they choose. Designs must allow for access to the primary and secondary fans and have provisions for parking and restricted access upon project completion. If portions of this area outside the existing fence line are used, the offeror must extend the fence to include the new perimeter. Old perimeter fencing may not be reused and will need to be removed and disposed of. Additionally, all construction debris/waste generated from demolition or installation as part of this project shall be removed and disposed of by the offeror.

**Orange Area:** Primary American Davidson fan and the above ground electrical conduit. This area must remain as is except for the ductwork revisions captured in the blue area.

**Purple Area:** Secondary Spendrup fan and VFD building. This fan and building shall be removed and disposed of and is not required to function or exist upon project completion. Offeror's will not be constrained to the existing placement (or ducting) of the existing secondary fan. Offeror's should investigate the area and propose a secondary fan location that provides the most efficient layout. While not a project requirement, SDSTA would like to keep the Spendrup fan operational as long as possible during construction.

**Blue Area:** Primary and secondary fan ducting connected to the Oro Hondo shaft. Offerors shall propose solutions that best optimize the fan ducting for the placement of the new secondary and existing primary fan

designs. New ducting must allow the primary or secondary fan to run, but not both at the same time. All existing ducting that is not used in the new design along with the fan pedestals must be removed and disposed of by the offeror.

**Red Area:** Overhead line and lattice tower that distributes 2400-Volts from the substation to the American Davidson and Spendrup fan. This tower and overhead line will be removed and disposed of by the offeror as part of this project.

**Green Area:** Unused building that may be repurposed or torn down and used as space for this project. There is a rail mounted winch installed in this building that is used to lower a scanner down the Oro Hondo shaft. If this building is repurposed or removed, offeror's must provide provisions for scanning the shaft upon project completion. This can be accomplished by relocating the winch or a new method.

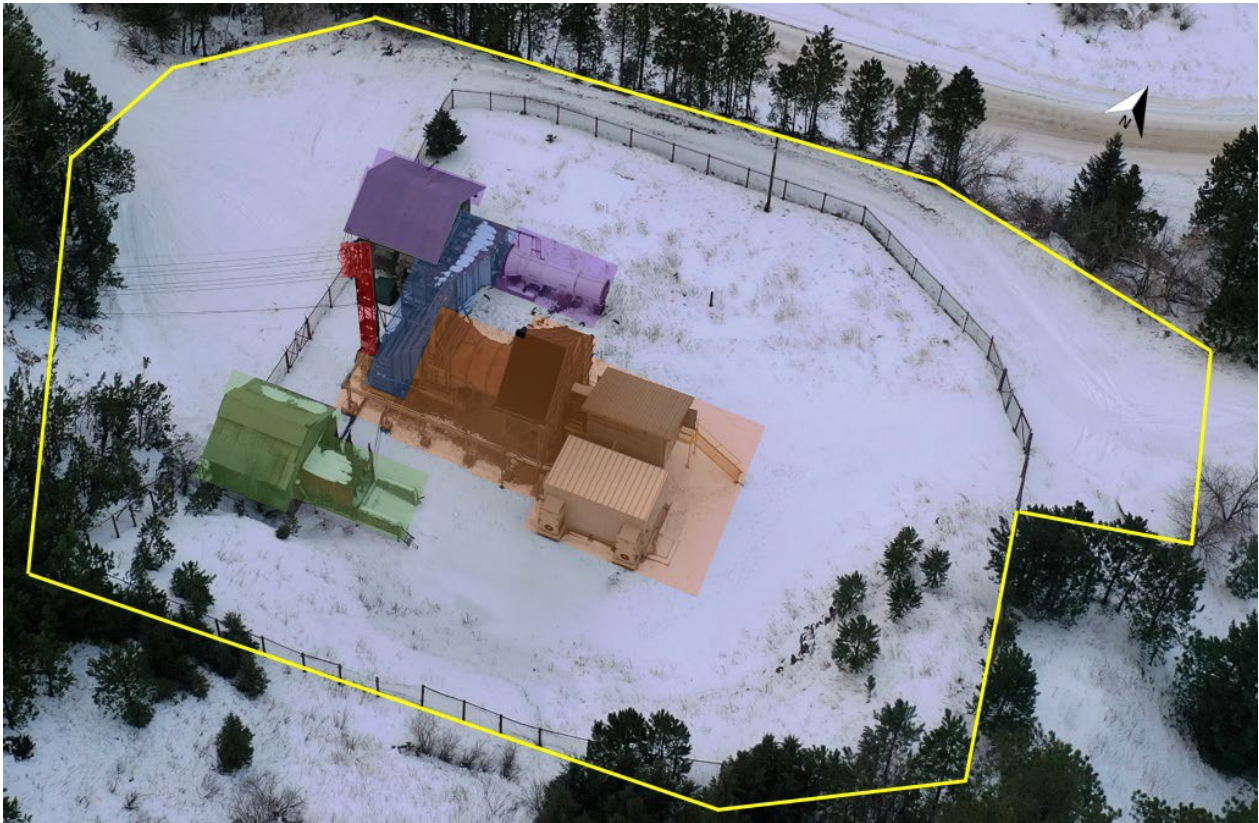


Figure 5.0 – OHFC Construction Boundary

### 3.2.2 OHFC Outage Restrictions During Installation

The OHFC provides the main ventilation for the underground spaces at SURF. In the event neither of these fans can operate, the underground will naturally ventilate at significantly lower flows and with less predictability than powered ventilation. These natural flows, while sufficient to provide breathable air to support personnel, will not provide enough airflow to support normal underground operations and must be limited.

To reduce the impact to underground operations, offerors must limit powered ventilation outages to no more than 72 hours at a time. Multiple 72-hour outages during the installation are allowed with a minimum of 14

days between each outage. Work shall be performed 24 hours/day during any ventilation outage. Outages must be built into the offerors project schedule. A minimum of two weeks' notice must be provided if changes to scheduled outages are needed.

### **3.3 Oro Hondo Substation Electrical Distribution Reconfiguration**

The offeror shall evaluate the existing conditions of the Oro Hondo Substation, the 2400-Volt overhead feeder to the OHFC, and the OHFC power distribution to identify what is required to convert the OHFC feeder to 12,470 Volt (12kV) enclosed in a duct bank. The following items must be evaluated and included in the subsequent proposal:

- Oro Hondo Substation –
  - Running conduit to existing GE Power Vac 15kV, 2000A rated switchgear housed inside the substation building.
  - Cleaning, testing, and adjustment of a GE Vacuum Circuit Breaker (VCB)
  - Installation of a new Feeder Protection Relay for the VCB.
  - Determining the required protection relay trip settings and programming, testing, and calibration of the feeder protection relay.
- OHFC Feeder –
  - Installation of an electrical duct bank between the substation and the OHFC.
  - Removal of the 2400-Volt overhead line (including conductors, pole structures, and lattice tower at the OHFC.)
- OHFC Distribution –
  - Installation of new switchgear and transformers at the OHFC to supply the required voltages to existing and new fan and site services equipment.
  - Installation of any instrumentation, controls, or communication equipment necessary to make the primary and backup fans operate as a fully functional and controllable ventilation system.
- Design, procurement, and installation of all items listed above.

#### **3.3.1 Oro Hondo Substation Changes**

The Oro Hondo Substation is shown in **Figure 5.1**. The utility company supplies power to the Oro Hondo substation at 69,000 Volts (69kV.) Two 3MVA (nominal) 69kV to 2400-Volt transformers (selectable by manually operated source transfer switch) provide power to the OHFC. The substation 2400-Volt distribution system shall be discontinued and the OHFC feeder shall be converted to a single 12kV feeder. An existing 10 MVA transformer steps the 69 kV utility supply voltage down to 12kV. This 12kV transformer feeds 15kV, 2000-amp rated, GE Power Vac switchgear located inside the substation control building, which then distributes power to other areas of the lab. Historical meter data shows that the load on this transformer ranges from 1600 to 2200kVA, which leaves plenty of available capacity to power the OHFC.



Figure 5.1 - Oro Hondo Substation

Currently there are three unused VCBs in the 15kV switchgear shown on one-line diagram in Exhibit 3. One of these VCBs can be used to provide power for a 12kV feeder to the OHFC. The contractor shall be responsible for:

- Establishing a conduit route into the substation building and terminating at the 15kV switchgear.
- Having the selected VCB serviced (cleaned, tested, and adjusted) to insure reliability.
- Procurement and installation of a new feeder protection relay in the selected VCB cubicle.
- Determining appropriate protection relay settings and programming and calibrating the relay.
- Performing a coordination study to verify proper coordination with the power system.

One existing 2400-Volt transformer will be de-energized and abandoned in place. The other existing 2400-Volt transformer must remain energized to power a 37.5 kVA, 240/120V substation service power transformer indicated on the one-line diagram shown in Exhibit 3.

All ancillary work to accomplish the substation changes (design documents, drawings, engineering, equipment sizing, procurement, installation, and deliverables listed in Section 9) shall be part of the offerors scope of work.

### 3.3.2 Overhead Line Removal & Duct Bank Installation

The new 12kV power feeder from the substation to the OHFC shall be routed through a duct bank installed as part of this project. The scope of work includes:

- Removal and disposal of the overhead line shown in **Figure 5.2** including conductors, four power pole structures, and a steel lattice tower structure at the OHFC.





Figure 5.2 – Existing Overhead Line Feeding the OHFC

- Design and installation of an electrical duct bank between the Oro Hondo substation and the OHFC.
  - Minimum of three 4” schedule 40 PVC conduits (one for 12kV feeder cables, one for future use, and one for fiber-optic/power limited control cables.)
  - The fiber-optic/control cable conduit shall be accessible at both ends and at any hand-holes/pull-points without exposing workers to energized medium voltage cables or equipment.
  - Contractor shall determine if /where pull-points or manholes are required.
  - Spacers shall be used in the duct bank to maintain consistent conduit depth and spacing.
  - Duct bank shall be designed and installed such that there are no shear stresses on the conduits (no cold joints or cross-sectional seams, install lap-spliced rebar in the concrete the full length of the duct bank, etc.)
  - A #2 AWG bare copper wire shall be embedded in the duct bank concrete that runs the full length of the duct bank without splicing.
  - Rock excavation: Multiple projects have excavated areas within the SURF’s surface footprint. Although bedrock is often encountered, it is fairly weathered and can be excavated with a sufficient sized machine equipped with ripper teeth and sometimes requiring jack hammering. Blasting will not be permitted. No additional payment will be made for rock excavation.

All ancillary work to complete the overhead line and duct bank work (design documents, drawings, engineering calculations, equipment sizing, procurement, installation, and deliverables listed in section 9) shall be part of the offerors scope of work.

### 3.3.3 Oro Hondo Fan Complex Electrical Changes

Conversion of the OHFC feeder to 12kV requires installation of new transformers and 12kV switchgear at the OHFC.

- The American Davidson fan will remain at 2400 volts and requires its own 12kV to 2400V stepdown transformer.
- The new backup fan motor voltage shall be 4160V (see detailed fan specs) and will require a 12kV to 4160V stepdown transformer.
- An existing 500kVA, 2400V to 480V transformer provides power for the Spendrup fan and miscellaneous support equipment (lighting, instruments & controls, communications, isolation gate operators, winch, etc.). This transformer will be oversized after the Spendrup fan is removed. Most of the equipment this transformer serves is in the Spendrup building which is slated to be torn down. A new 12kV to 480V (or 208V) transformer shall be installed to provide site power that is independent of the primary and backup fan power systems.
- Switchgear is required to distribute power to the OHFC transformers, provide over-current and short-circuit protection for each transformer, and provide a means to isolate one fan system from the other without affecting OHFC site power. Fused load-break switches are typically used at the 12kV distribution level at SURF.

The scope of work for electrical changes at the OHFC shall include:

- Design of the distribution system including calculations to determine appropriate sizes of transformers, conductors, conduits, and switchgear fuses.
- Design and installation of concrete equipment pads and duct banks for routing the branch circuit conductors from the switchgear to the transformers and the loads they serve. Duct banks shall include separate conduits for low voltage controls and communication cables.
- Design of a grounding grid/system for equipment bonding and personnel shock protection.
- Disconnection and removal of existing equipment that will be retained by SURF or must be re-installed to complete the project.
- Demolition and disposal of existing equipment that will not be retained or reused.
- Procurement, delivery, and installation of new transformers. All transformers shall be outdoor dry type, mounted on concrete equipment pads, have enclosures that provide adequate protection against rodents/wildlife, and be rated for the humid environment at the OHFC.  
(Dry type transformers are required because SURF environmental policy requires that any fluid containing equipment that holds more than 110 gallons of fluid shall have a secondary containment system. SURF intends to eliminate all existing fluid filled transformers as the opportunities arise.)
- Procurement, delivery, and installation of new switchgear. Switchgear may be outdoor rated or indoor rated if located inside a weather-proof structure. All switchgear shall have enclosures that provide adequate protection against rodents/wildlife and be rated for the humid environment at the OHFC.
- Service equipment for the OHFC (Panelboard, Load Center, controls, networking & communication equipment, etc.) must be located in a clean, dry environmentally controlled space. This may be a shared space with the new backup fan VFD or may be a newly established structure.
- An empty 1" electrical conduit shall run from the new Oro Hondo Backup Fan VFD to the General Electric 90/30 PLC cabinet currently installed inside the American Davidson Fan E-House for future control circuits.
- Electrical connection of all procured items to their respective equipment, and reconnection of equipment that was temporarily disconnected.



All ancillary work to accomplish the OHFC electrical changes (design documents, drawings, engineering calculations, equipment sizing, procurement, installation, and deliverables listed in Section 9) shall be part of the offerors scope of work.

**Figure 5.3** is a conceptual one-line diagram to illustrate what is described in this electrical scope of work. Sizes and values shown are for illustration purposes only. The offeror is responsible for determining and verifying correct equipment sizing and ratings.

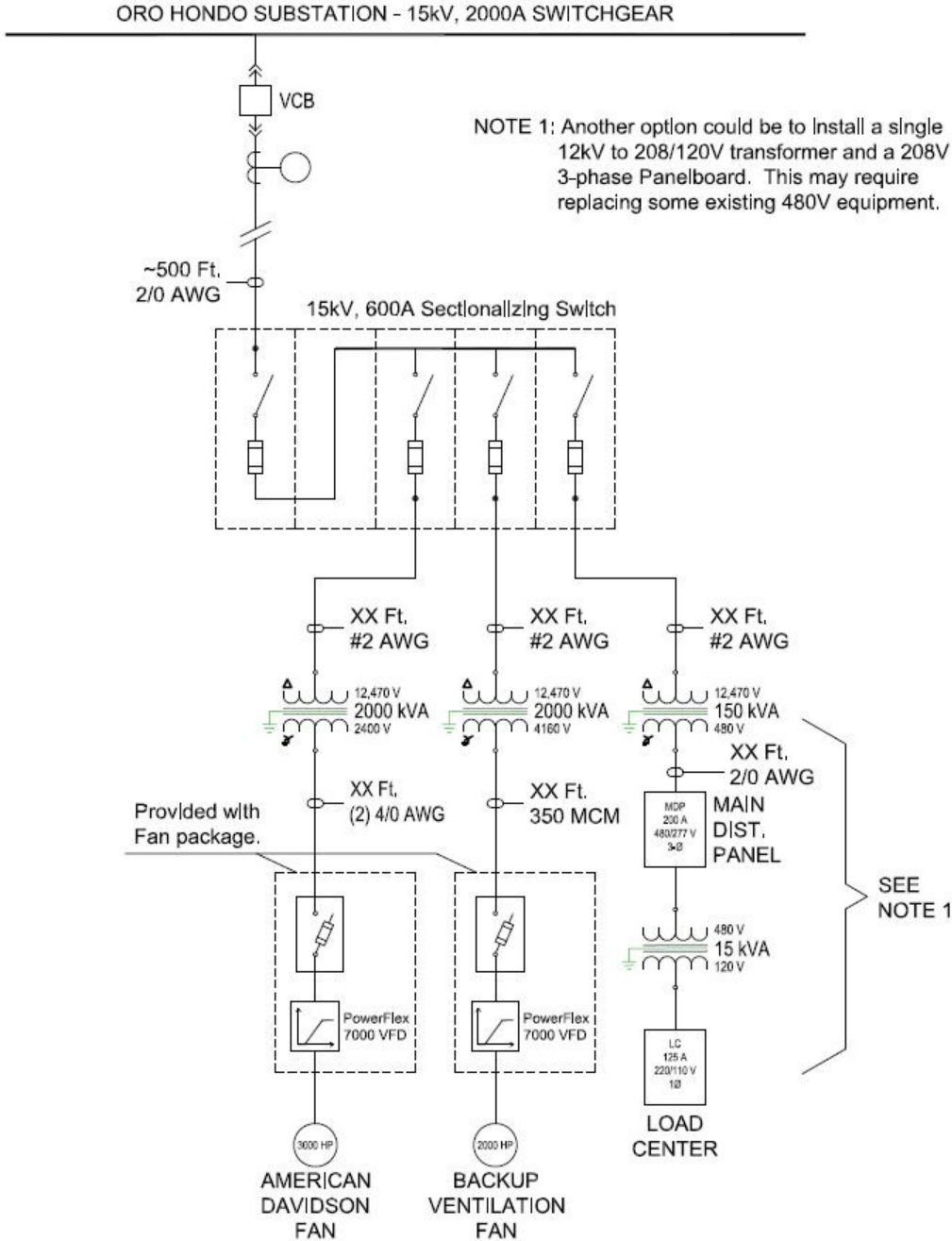


Figure 5.3 – Conceptual Electrical Distribution One-Line Diagram for the Oro Hondo Fans

- Exhibit 11 includes examples of transformers and switchgear that have been recently purchased and installed at SURF. The purpose is to provide guidance and potential solutions for the project. The offeror may propose other equipment or options for consideration.

#### **3.3.4 Arc Flash Calculations and Labeling**

All new electrical equipment and connections shall be installed in accordance with the most recent applicable codes and standards. Additionally, the offeror shall be required to perform the arc flash risk assessment calculations and apply arc flash labeling on newly installed electrical equipment and other equipment whose available fault current has been impacted by the electrical changes in this project.

The arc flash label design shall follow the SDSTA's arc flash label design requirements provided in Exhibit 10. The SDSTA will provide copies of the facility model in SKM PowerTools format for the offeror to add to and run the arc flash calculations. The design offeror shall edit and return the modified facility SKM model back to SDSTA during project closeout.

**EXHIBIT D**  
**CONTRACTOR'S PROPOSAL**

**To be inserted  
upon selection of Contractor**

FAN Breakout Prices -

9-Aug-21

HAVCPEV0023

Added/Revised Item - gives additional breakouts or better description

Item

Clin1 - Conceptual Design (20% Complete)		\$0		
Clin2 - Prelim Design (60% complete)		\$125,452		
Clin3 - Pre Final design (90% Complete)		\$125,452		
Clin4 - Final Design (100% Complete)		\$127,379		
Clin5 - Design Support Services during construction		\$61,885		
<b>5.1 Backup Fan Design and Procurement (total)</b>			<b>\$1,404,881</b>	<b>TOTAL</b>
5.1.a. Fan Assembly w/Inlet Cone, Casing, Bearings, Coupling, Misc		\$283,386		
		\$232,210		
5.1.b. Fan Ducting (Dbl Elbow, Transition, Qty3-Flex Joints, Inlet Screen, Intake duct to fan, & Pins/Clips for insulation				
5.1.c. Isolation Dampers (qty 1)		\$30,670		
5.1.d. Inlet and Outlet Cones Outlet Diffuser		\$24,675		
5.1.e. Fan Motor with Cover/Canopy		\$118,100		
<b>motor and bearing canopy (Option)</b>		<b>\$16,000</b>		
Motor building rather than canopy	RCS	\$133,333		
Insulation with labor of ducting	Elite	\$110,000		
Outlet Silencer w/Supports		\$49,870		
5.1.f. Drive Shaft				
5.1.g. VFD and Controls Powerflex 7000		\$350,380		
5.1.h. Instrumentation maestro Panel		\$56,257		
<b>5.2 Fan Installation (total)</b>			<b>\$1,392,763</b>	<b>TOTAL</b>
mechanical installation labour		\$337,333		
grout, shims, equipment rental, and other material		\$161,333		
5.2.a. Excavation and Site prep site excavation	RCS	\$787,430		
5.2.b. Installation of Fan Package Mechanical				
5.2. c. Site restoration and cleanup for 5.1, 5.2, & 5.3 Elite fencing and reclamation	Elite	\$106,667		
<b>5.3. Electrical Distribution Reconfiguration (total)</b>			<b>\$2,023,594</b>	<b>TOTAL</b>
5.3.a. Oro Hondo Substation Changes	Elite	\$95,091		
5.3.b. Overhead Line Removal	Elite	\$26,693		
5.3.c. Duct Bank Installation	Elite + RCS	\$291,262		
<b>Optional cable tray installation</b>	<b>Elite + RCS</b>		<b>\$282,524</b>	
5.3.d. OHFC Electrical Changes		\$468,000		electrical site work with cabling and other hardware
Ehouse base switchgear		\$335,961		
<b>Ehouse (switchgear upgrade option)</b>			<b>\$401,017</b>	
Transformers		\$220,341		
5.3.e. Arc Flash Calculations and Labeling				included in total engineering
Commissioning for 5.1, 5.2, and 5.3 (mechanical technician 2 weeks)		\$33,435		
VFD commissioning ( 2 weeks worse case)		\$45,000		
commissioning electrical technician (2 visits 5 weeks)		\$80,602		
Howden Site Supervisor				
Project Safety supervisor		\$427,209		supervisory Labour total
<b>Optional Torsion Testing</b>			<b>\$20,000</b>	
FREIGHT to Site; Lead, South Dakota USA		\$81,900		
<b>TOTAL PROPOSAL</b>		<b>\$5,327,307</b>		
Bid bond (3.75%) to be added to total		\$199,774		
<b>Spare Parts to be added to total</b>		<b>\$227,362</b>		<b>spare parts vary with option</b>
<b>Total estimated taxes</b>		<b>\$266,365</b>		
<b>Total</b>		<b>\$5,793,446.01</b>		

**EXHIBIT E**

**FEDERAL REQUIREMENTS**

## FEDERAL TERMS AND CONDITIONS

The Equal Opportunity Act 2000 (EOA) prohibits any person concerned with the provision of goods, facilities, and services to the public or a section of the public from discriminating against a person who seeks to obtain those goods, facilities and services. Discrimination on the basis of race, color, national origin, sex, disability, or age is prohibited by federal civil rights laws.

### **FA-TC-0015**

#### **FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS**

Subcontractor will comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

### **FA-TC-0015.1-SURF**

#### **FEDERAL EXPORT CONTROL LAWS**

The recipient will comply with all Federal Export Control laws, rules, and regulations which generally regulate the export of sensitive technologies, equipment, software, and related data and services such as: the Export Administration Act and Export Administration Regulations (“EAR”); the Atomic Energy Act of 1954; the Arms Export Control Act and the International Traffic in Arms Regulations (“ITAR”); and the Trading with the Enemy Act and the Foreign Asset Control Regulations.

### **FA-TC-0020**

#### **NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS**

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

### **FA-TC-0023**

#### **ENVIRONMENTAL, SAFETY AND HEALTH (ES&H) PERFORMANCE OF WORK AT DOE FACILITIES**

With respect to the performance of any portion of the work under this award which is performed at a DOE-owned or controlled site, the recipient agrees to comply with all State and Federal ES&H regulations and with all other ES&H requirements of the operator of such site.

Prior to the performance on any work at a DOE-Owned or controlled site, the recipient shall contact the site facility manager for information on DOE and site specific ES&H requirements.

The recipient shall apply this term to its sub-recipients and contractors.

### **FA-TC-0031-CH (Modified)**

#### **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS**

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE/NNSA providing either a NEPA clearance or a final NEPA decision regarding this project.

### **FA-TC-0058**

#### **INDEMNITY**

The Recipient shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

### **FA-TC-0065**

#### **LOBBYING RESTRICTIONS (MARCH 2012)**

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

## FEDERAL TERMS AND CONDITIONS, CONT.

1. **Equal Employment Opportunity** – Compliance is required with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. **Copeland "Anti-Kickback" Act** (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients require compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. **Davis-Bacon Act**, as amended (40 U.S.C. 276a to a-7) - All construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 327-333) - Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. **Rights to Inventions Made Under a Contract or Agreement** - Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. **Clean Air Act** (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and subgrants of amounts in excess of \$100,000 require the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352) - Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. **Debarment and Suspension** (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.



**EXHIBIT F**  
**WAGE DETERMINATION**

"REGISTER OF WAGE DETERMINATIONS UNDER | U.S. DEPARTMENT OF LABOR  
THE SERVICE CONTRACT ACT | EMPLOYMENT STANDARDS ADMINISTRATION

By direction of the Secretary of Labor | WAGE AND HOUR DIVISION

| WASHINGTON D.C. 20210

|

|

|

| Wage Determination No.: 2015-5009

Daniel W. Simms | Division of | Revision No.: 13

Director | Wage Determinations | Date Of Last Revision: 05/13/2020

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Note: Under Executive Order (EO) 13658 an hourly minimum

wage of \$10.80 for calendar year 2020 applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1 2015. If this contract is covered by the EO the contractor must pay all workers in any classification listed on this wage determination at least \$10.80 per hour (or the applicable wage rate listed on this wage determination if it is higher) for all hours spent performing on the contract in calendar year 2020. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

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State: South Dakota

Area: South Dakota County of Union

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**\*\*Fringe Benefits Required Follow the Occupational Listing\*\***

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		14.07
01012 - Accounting Clerk II		15.79
01013 - Accounting Clerk III		17.67
01020 - Administrative Assistant		22.29
01035 - Court Reporter		18.67
01041 - Customer Service Representative I		12.25
01042 - Customer Service Representative II		13.78
01043 - Customer Service Representative III		15.03
01051 - Data Entry Operator I		13.16
01052 - Data Entry Operator II		14.36
01060 - Dispatcher Motor Vehicle		23.23
01070 - Document Preparation Clerk		14.86
01090 - Duplicating Machine Operator		14.86
01111 - General Clerk I		14.12
01112 - General Clerk II		15.40
01113 - General Clerk III		17.29
01120 - Housing Referral Assistant		20.81
01141 - Messenger Courier		11.67
01191 - Order Clerk I		17.22
01192 - Order Clerk II		18.78

01261 - Personnel Assistant (Employment) I	16.13
01262 - Personnel Assistant (Employment) II	18.05
01263 - Personnel Assistant (Employment) III	20.12
01270 - Production Control Clerk	23.28
01290 - Rental Clerk	12.72
01300 - Scheduler Maintenance	16.68
01311 - Secretary I	16.68
01312 - Secretary II	18.67
01313 - Secretary III	20.81
01320 - Service Order Dispatcher	20.06
01410 - Supply Technician	22.29
01420 - Survey Worker	16.38
01460 - Switchboard Operator/Receptionist	13.36
01531 - Travel Clerk I	12.42
01532 - Travel Clerk II	13.21
01533 - Travel Clerk III	14.02
01611 - Word Processor I	14.86
01612 - Word Processor II	16.68
01613 - Word Processor III	18.67
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer Fiberglass	19.72
05010 - Automotive Electrician	18.81
05040 - Automotive Glass Installer	17.86
05070 - Automotive Worker	17.86
05110 - Mobile Equipment Servicer	15.86
05130 - Motor Equipment Metal Mechanic	19.59
05160 - Motor Equipment Metal Worker	17.86
05190 - Motor Vehicle Mechanic	19.59
05220 - Motor Vehicle Mechanic Helper	14.83

05250 - Motor Vehicle Upholstery Worker	16.86
05280 - Motor Vehicle Wrecker	17.86
05310 - Painter Automotive	18.81
05340 - Radiator Repair Specialist	17.86
05370 - Tire Repairer	14.71
05400 - Transmission Repair Specialist	19.59
07000 - Food Preparation And Service Occupations	
07010 - Baker	15.10
07041 - Cook I	11.79
07042 - Cook II	13.28
07070 - Dishwasher	9.55
07130 - Food Service Worker	10.78
07210 - Meat Cutter	13.28
07260 - Waiter/Waitress	9.48
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	18.41
09040 - Furniture Handler	12.58
09080 - Furniture Refinisher	18.41
09090 - Furniture Refinisher Helper	14.55
09110 - Furniture Repairer Minor	16.50
09130 - Upholsterer	18.41
11000 - General Services And Support Occupations	
11030 - Cleaner Vehicles	13.09
11060 - Elevator Operator	12.89
11090 - Gardener	16.99
11122 - Housekeeping Aide	12.89
11150 - Janitor	12.89
11210 - Laborer Grounds Maintenance	13.76
11240 - Maid or Houseman	11.26

11260 - Pruner	12.67
11270 - Tractor Operator	15.89
11330 - Trail Maintenance Worker	13.76
11360 - Window Cleaner	14.00
12000 - Health Occupations	
12010 - Ambulance Driver	18.17
12011 - Breath Alcohol Technician	18.17
12012 - Certified Occupational Therapist Assistant	24.92
12015 - Certified Physical Therapist Assistant	23.45
12020 - Dental Assistant	20.59
12025 - Dental Hygienist	35.35
12030 - EKG Technician	26.78
12035 - Electroneurodiagnostic Technologist	26.78
12040 - Emergency Medical Technician	18.17
12071 - Licensed Practical Nurse I	16.23
12072 - Licensed Practical Nurse II	18.17
12073 - Licensed Practical Nurse III	20.25
12100 - Medical Assistant	15.92
12130 - Medical Laboratory Technician	21.38
12160 - Medical Record Clerk	14.79
12190 - Medical Record Technician	18.17
12195 - Medical Transcriptionist	17.91
12210 - Nuclear Medicine Technologist	39.91
12221 - Nursing Assistant I	11.04
12222 - Nursing Assistant II	12.42
12223 - Nursing Assistant III	13.55
12224 - Nursing Assistant IV	15.21
12235 - Optical Dispenser	17.53
12236 - Optical Technician	16.23

12250 - Pharmacy Technician	16.03
12280 - Phlebotomist	14.51
12305 - Radiologic Technologist	23.31
12311 - Registered Nurse I	23.29
12312 - Registered Nurse II	28.49
12313 - Registered Nurse II Specialist	28.49
12314 - Registered Nurse III	34.47
12315 - Registered Nurse III Anesthetist	34.47
12316 - Registered Nurse IV	41.32
12317 - Scheduler (Drug and Alcohol Testing)	22.50
12320 - Substance Abuse Treatment Counselor	15.95
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	15.11
13012 - Exhibits Specialist II	18.68
13013 - Exhibits Specialist III	22.89
13041 - Illustrator I	14.90
13042 - Illustrator II	18.46
13043 - Illustrator III	22.59
13047 - Librarian	20.44
13050 - Library Aide/Clerk	13.06
13054 - Library Information Technology Systems Administrator	18.46
13058 - Library Technician	
13058 - Library Technician	16.52
13061 - Media Specialist I	13.48
13062 - Media Specialist II	14.90
13063 - Media Specialist III	16.62
13071 - Photographer I	14.95
13072 - Photographer II	16.73
13073 - Photographer III	20.72

13074 - Photographer IV		25.35
13075 - Photographer V		30.67
13090 - Technical Order Library Clerk		16.65
13110 - Video Teleconference Technician		12.75
14000 - Information Technology Occupations		
14041 - Computer Operator I		14.10
14042 - Computer Operator II		15.85
14043 - Computer Operator III		17.59
14044 - Computer Operator IV		19.49
14045 - Computer Operator V		21.71
14071 - Computer Programmer I	(see 1)	19.46
14072 - Computer Programmer II	(see 1)	24.12
14073 - Computer Programmer III	(see 1)	
14074 - Computer Programmer IV	(see 1)	
14101 - Computer Systems Analyst I	(see 1)	
14102 - Computer Systems Analyst II	(see 1)	
14103 - Computer Systems Analyst III	(see 1)	
14150 - Peripheral Equipment Operator		15.51
14160 - Personal Computer Support Technician		22.57
14170 - System Support Specialist		22.96
15000 - Instructional Occupations		
15010 - Aircrew Training Devices Instructor (Non-Rated)		30.93
15020 - Aircrew Training Devices Instructor (Rated)		37.42
15030 - Air Crew Training Devices Instructor (Pilot)		43.93
15050 - Computer Based Training Specialist / Instructor		30.93
15060 - Educational Technologist		28.15
15070 - Flight Instructor (Pilot)		43.93
15080 - Graphic Artist		19.72
15085 - Maintenance Test Pilot Fixed Jet/Prop		41.51



15086 - Maintenance Test Pilot Rotary Wing	41.51
15088 - Non-Maintenance Test/Co-Pilot	41.51
15090 - Technical Instructor	17.59
15095 - Technical Instructor/Course Developer	21.52
15110 - Test Proctor	14.20
15120 - Tutor	14.20
16000 - Laundry Dry-Cleaning Pressing And Related Occupations	
16010 - Assembler	10.64
16030 - Counter Attendant	10.64
16040 - Dry Cleaner	12.16
16070 - Finisher Flatwork Machine	10.64
16090 - Presser Hand	10.64
16110 - Presser Machine Drycleaning	10.64
16130 - Presser Machine Shirts	10.64
16160 - Presser Machine Wearing Apparel Laundry	10.64
16190 - Sewing Machine Operator	12.85
16220 - Tailor	13.61
16250 - Washer Machine	11.15
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	24.54
19040 - Tool And Die Maker	28.37
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	17.66
21030 - Material Coordinator	23.28
21040 - Material Expediter	23.28
21050 - Material Handling Laborer	16.16
21071 - Order Filler	14.98
21080 - Production Line Worker (Food Processing)	17.66
21110 - Shipping Packer	17.82

21130 - Shipping/Receiving Clerk	17.82
21140 - Store Worker I	13.40
21150 - Stock Clerk	17.05
21210 - Tools And Parts Attendant	17.66
21410 - Warehouse Specialist	17.66
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	26.87
23019 - Aircraft Logs and Records Technician	22.15
23021 - Aircraft Mechanic I	25.73
23022 - Aircraft Mechanic II	26.87
23023 - Aircraft Mechanic III	27.72
23040 - Aircraft Mechanic Helper	19.49
23050 - Aircraft Painter	24.71
23060 - Aircraft Servicer	22.15
23070 - Aircraft Survival Flight Equipment Technician	24.71
23080 - Aircraft Worker	23.47
23091 - Aircrew Life Support Equipment (ALSE) Mechanic I	23.47
23092 - Aircrew Life Support Equipment (ALSE) Mechanic II	25.73
23110 - Appliance Mechanic	23.39
23120 - Bicycle Repairer	16.69
23125 - Cable Splicer	40.91
23130 - Carpenter Maintenance	20.55
23140 - Carpet Layer	23.31
23160 - Electrician Maintenance	25.15
23181 - Electronics Technician Maintenance I	23.31
23182 - Electronics Technician Maintenance II	24.54
23183 - Electronics Technician Maintenance III	25.56

23260 - Fabric Worker	21.99
23290 - Fire Alarm System Mechanic	25.56
23310 - Fire Extinguisher Repairer	20.69
23311 - Fuel Distribution System Mechanic	27.93
23312 - Fuel Distribution System Operator	22.24
23370 - General Maintenance Worker	19.39
23380 - Ground Support Equipment Mechanic	25.73
23381 - Ground Support Equipment Servicer	22.15
23382 - Ground Support Equipment Worker	23.47
23391 - Gunsmith I	20.69
23392 - Gunsmith II	23.31
23393 - Gunsmith III	25.56
23410 - Heating Ventilation And Air-Conditioning Mechanic	27.03
23411 - Heating Ventilation And Air Contidioning Mechanic (Research Facility)	28.23
23430 - Heavy Equipment Mechanic	24.20
23440 - Heavy Equipment Operator	22.11
23460 - Instrument Mechanic	25.56
23465 - Laboratory/Shelter Mechanic	24.54
23470 - Laborer	16.16
23510 - Locksmith	24.54
23530 - Machinery Maintenance Mechanic	25.98
23550 - Machinist Maintenance	19.79
23580 - Maintenance Trades Helper	19.35
23591 - Metrology Technician I	25.56
23592 - Metrology Technician II	26.69
23593 - Metrology Technician III	27.52
23640 - Millwright	25.56

23710 - Office Appliance Repairer	21.14
23760 - Painter Maintenance	17.76
23790 - Pipefitter Maintenance	28.65
23810 - Plumber Maintenance	27.51
23820 - Pneudraulic Systems Mechanic	25.56
23850 - Rigger	25.56
23870 - Scale Mechanic	23.31
23890 - Sheet-Metal Worker Maintenance	26.20
23910 - Small Engine Mechanic	21.78
23931 - Telecommunications Mechanic I	26.68
23932 - Telecommunications Mechanic II	27.86
23950 - Telephone Lineman	24.49
23960 - Welder Combination Maintenance	19.59
23965 - Well Driller	25.56
23970 - Woodcraft Worker	25.56
23980 - Woodworker	20.69
24000 - Personal Needs Occupations	
24550 - Case Manager	16.08
24570 - Child Care Attendant	9.81
24580 - Child Care Center Clerk	12.24
24610 - Chore Aide	12.34
24620 - Family Readiness And Support Services Coordinator	16.08
24630 - Homemaker	16.08
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	25.56
25040 - Sewage Plant Operator	24.04
25070 - Stationary Engineer	25.56
25190 - Ventilation Equipment Tender	19.35

25210 - Water Treatment Plant Operator	24.04
27000 - Protective Service Occupations	
27004 - Alarm Monitor	21.04
27007 - Baggage Inspector	13.18
27008 - Corrections Officer	20.22
27010 - Court Security Officer	22.78
27030 - Detection Dog Handler	14.82
27040 - Detention Officer	20.22
27070 - Firefighter	22.58
27101 - Guard I	13.18
27102 - Guard II	14.82
27131 - Police Officer I	26.05
27132 - Police Officer II	28.94
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	11.51
28042 - Carnival Equipment Repairer	12.31
28043 - Carnival Worker	9.18
28210 - Gate Attendant/Gate Tender	15.15
28310 - Lifeguard	12.17
28350 - Park Attendant (Aide)	16.94
28510 - Recreation Aide/Health Facility Attendant	12.36
28515 - Recreation Specialist	20.82
28630 - Sports Official	13.50
28690 - Swimming Pool Operator	16.52
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	22.50
29020 - Hatch Tender	22.50
29030 - Line Handler	22.50
29041 - Stevedore I	21.19

29042 - Stevedore II	23.94
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist Center (HFO) (see 2)	39.89
30011 - Air Traffic Control Specialist Station (HFO) (see 2)	27.50
30012 - Air Traffic Control Specialist Terminal (HFO) (see 2)	30.29
30021 - Archeological Technician I	17.72
30022 - Archeological Technician II	19.83
30023 - Archeological Technician III	24.56
30030 - Cartographic Technician	24.56
30040 - Civil Engineering Technician	21.69
30051 - Cryogenic Technician I	25.70
30052 - Cryogenic Technician II	28.39
30061 - Drafter/CAD Operator I	17.72
30062 - Drafter/CAD Operator II	19.83
30063 - Drafter/CAD Operator III	22.10
30064 - Drafter/CAD Operator IV	27.20
30081 - Engineering Technician I	15.43
30082 - Engineering Technician II	17.32
30083 - Engineering Technician III	19.38
30084 - Engineering Technician IV	24.00
30085 - Engineering Technician V	29.37
30086 - Engineering Technician VI	35.53
30090 - Environmental Technician	24.56
30095 - Evidence Control Specialist	23.21
30210 - Laboratory Technician	22.10
30221 - Latent Fingerprint Technician I	25.70
30222 - Latent Fingerprint Technician II	28.39
30240 - Mathematical Technician	24.56
30361 - Paralegal/Legal Assistant I	19.49

30362 - Paralegal/Legal Assistant II	24.14	
30363 - Paralegal/Legal Assistant III	29.53	
30364 - Paralegal/Legal Assistant IV	35.73	
30375 - Petroleum Supply Specialist	28.39	
30390 - Photo-Optics Technician	24.56	
30395 - Radiation Control Technician	28.39	
30461 - Technical Writer I	24.56	
30462 - Technical Writer II	30.04	
30463 - Technical Writer III	36.35	
30491 - Unexploded Ordnance (UXO) Technician I	25.35	
30492 - Unexploded Ordnance (UXO) Technician II	30.67	
30493 - Unexploded Ordnance (UXO) Technician III	36.76	
30494 - Unexploded (UXO) Safety Escort	25.35	
30495 - Unexploded (UXO) Sweep Personnel	25.35	
30501 - Weather Forecaster I	27.20	
30502 - Weather Forecaster II	33.09	
30620 - Weather Observer Combined Upper Air Or	(see 2)	22.10

Surface Programs

30621 - Weather Observer Senior	(see 2)	24.56
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31000 - Transportation/Mobile Equipment Operation Occupations

31010 - Airplane Pilot	30.67	
31020 - Bus Aide	15.22	
31030 - Bus Driver	19.97	
31043 - Driver Courier	15.76	
31260 - Parking and Lot Attendant	14.01	
31290 - Shuttle Bus Driver	16.85	
31310 - Taxi Driver	13.84	
31361 - Truckdriver Light	16.85	
31362 - Truckdriver Medium	17.91	

31363 - Truckdriver Heavy	21.16
31364 - Truckdriver Tractor-Trailer	21.16
99000 - Miscellaneous Occupations	
99020 - Cabin Safety Specialist	14.95
99030 - Cashier	10.66
99050 - Desk Clerk	10.52
99095 - Embalmer	25.35
99130 - Flight Follower	25.35
99251 - Laboratory Animal Caretaker I	18.11
99252 - Laboratory Animal Caretaker II	19.57
99260 - Marketing Analyst	23.30
99310 - Mortician	25.35
99410 - Pest Controller	20.80
99510 - Photofinishing Worker	13.32
99710 - Recycling Laborer	19.61
99711 - Recycling Specialist	22.65
99730 - Refuse Collector	18.07
99810 - Sales Clerk	11.66
99820 - School Crossing Guard	14.59
99830 - Survey Party Chief	18.54
99831 - Surveying Aide	12.22
99832 - Surveying Technician	16.73
99840 - Vending Machine Attendant	18.30
99841 - Vending Machine Repairer	22.04
99842 - Vending Machine Repairer Helper	18.30



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Note: Executive Order (EO) 13706 Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1 2017. If this contract is covered by the EO the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness injury or other health-related needs including preventive care; to assist a family member (or person who is like family to the employee) who is ill injured or has other health-related needs including preventive care; or for reasons resulting from or to assist a family member (or person who is like family to the employee) who is the victim of domestic violence sexual assault or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.54 per hour up to 40 hours per week or \$181.60 per week or \$786.93 per month

HEALTH & WELFARE EO 13706: \$4.22 per hour up to 40 hours per week or \$168.80 per week or \$731.47 per month\*

\*This rate is to be used only when compensating employees for performance on an SCA-covered contract also covered by EO 13706 Establishing Paid Sick Leave for Federal Contractors. A contractor may not receive credit toward its SCA obligations for any paid sick leave provided pursuant to EO 13706.

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor 3 weeks after 10 years and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor wherever employed and with the predecessor contractors in the performance of similar work at the same Federal facility. (See 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day Martin Luther King Jr.'s Birthday Washington's Birthday Memorial Day Independence Day Labor Day Columbus Day Veterans' Day Thanksgiving Day and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b) this wage determination does not apply to any employee who individually qualifies as a bona fide executive administrative or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally because job titles vary widely and change quickly in the computer industry job titles are not determinative of the application of the computer professional exemption. Therefore the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures including consulting with users to determine hardware software or system functional specifications;

(2) The design development documentation analysis creation testing or modification of computer systems or programs including prototypes based on and related to user or system design specifications;

(3) The design documentation testing creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am.

If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

**\*\* HAZARDOUS PAY DIFFERENTIAL \*\***

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance explosives and incendiary materials. This includes work such as screening blending dying mixing and pressing of sensitive ordnance explosives and pyrotechnic compositions such as lead azide black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization modification renovation demolition and maintenance operations on sensitive ordnance explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with or in close proximity to ordnance (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands face or arms of the employee engaged in the operation irritation of the skin minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving unloading storage and hauling of ordnance explosive and incendiary ordnance material other than small arms ammunition. These differentials

are only applicable to work that has been specifically designated by the agency for ordnance explosives and incendiary material differential pay.

**\*\* UNIFORM ALLOWANCE \*\***

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract by the employer by the state or local law etc.) the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition where uniform cleaning and maintenance is made the responsibility of the employee all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount or the furnishing of contrary affirmative proof as to the actual cost) reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However in those instances where the uniforms furnished are made of ""wash and wear"" materials may be routinely washed and dried with other personal garments and do

not require any special treatment such as dry cleaning daily washing or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract by the contractor by law or by the nature of the work there is no requirement that employees be reimbursed for uniform maintenance costs.

**\*\* SERVICE CONTRACT ACT DIRECTORY OF OCCUPATIONS \*\***

The duties of employees under job titles listed are those described in the ""Service Contract Act Directory of Occupations"" Fifth Edition (Revision 1) dated September 2015 unless otherwise indicated.

**\*\* REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE Standard Form 1444 (SF-1444) \*\***

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e. the work to be performed is not performed by any classification listed in the wage

determination) be classified by the contractor so as to provide a reasonable relationship (i.e. appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination (See 29 CFR 4.6(b)(2)(i)). Such conforming procedures shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees (See 29 CFR 4.6(b)(2)(ii)). The Wage and Hour Division shall make a final determination of conformed classification wage rate and/or fringe benefits which shall be paid to all employees performing in the classification from the first day of work on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or fully determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract. (See 29 CFR 4.6(b)(2)(v)). When multiple wage determinations are included in a contract a separate SF-1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).

- 2) After contract award the contractor prepares a written report listing in order the proposed classification title(s) a Federal grade equivalency (FGE) for each



proposed classification(s) job description(s) and rationale for proposed wage rate(s) including information regarding the agreement or disagreement of the authorized representative of the employees involved or where there is no authorized representative the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.

3) The contracting officer reviews the proposed action and promptly submits a report of the action together with the agency's recommendations and pertinent information including the position of the contractor and the employees to the U.S. Department of Labor Wage and Hour Division for review (See 29 CFR 4.6(b)(2)(ii)).

4) Within 30 days of receipt the Wage and Hour Division approves modifies or disapproves the action via transmittal to the agency contracting officer or notifies the contracting officer that additional time will be required to process the request.

5) The contracting officer transmits the Wage and Hour Division's decision to the contractor.

6) Each affected employee shall be furnished by the contractor with a written copy

of such determination or it shall be posted as a part of the wage determination (See 29 CFR 4.6(b)(2)(iii)).

Information required by the Regulations must be submitted on SF-1444 or bond paper.

When preparing a conformance request the ""Service Contract Act Directory of Occupations"" should be used to compare job definitions to ensure that duties requested are not performed by a classification already listed in the wage determination. Remember it is not the job title but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split combine or subdivide classifications listed in the wage determination (See 29 CFR 4.152(c)(1))."

**EXHIBIT G**  
**BID BOND SECURITY**

**SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY  
SANFORD UNDERGROUND RESEARCH FACILITY  
(SURF) AT HOMESTAKE**

**ORE HONDO FAN BACKKUP  
Contract #2021-13**

**EXHIBIT F**

**BID SECURITY**

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

\_\_\_\_\_

\_\_\_\_\_

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

as Surety, are hereby held and firmly bound unto the South Dakota Science and Technology Authority, 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 the South Dakota Science and Technology Authority a certain Bid, attached hereto and hereby made a part hereof to enter into a contract in writing for the [ \_\_\_\_\_ ] Project at the \_\_\_\_\_] Project at the Sanford Lab at Homestake.

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 its 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.

**PARTNERSHIP OR CORPORATE 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

Countersigned by \_\_\_\_\_

\_\_\_\_\_  
Typed Name

South Dakota Resident Agent

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

\_\_\_\_\_  
Address

**ACKNOWLEDGMENT OF PRINCIPAL  
(Partnership)**

State of \_\_\_\_\_ )  
  )ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally  
appeared \_\_\_\_\_, who acknowledged  
him/her self to be one of the partners of \_\_\_\_\_  
\_\_\_\_\_, a partnership, and that he/she, as such partner, being authorized so to do,  
executed the foregoing instrument for the purposes therein contained, by signing the name of the  
partnership by him/her self as a partner.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

**ACKNOWLEDGMENT OF PRINCIPAL  
(Corporation)**

State of \_\_\_\_\_ )  
  )ss

County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, who acknowledged him/her self to be the\_of \_\_\_\_\_, a corporation, and that he/she, as such\_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by him/her self as\_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

**ACKNOWLEDGMENT OF SURETY  
(Corporate Officer)**

State of \_\_\_\_\_)  
  )ss  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said County, personally appeared \_\_\_\_\_ personally known to me, who being by me duly sworn, did say that he/she is the aforesaid officer of the of \_\_\_\_\_, a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the said instrument was signed, sealed and executed in behalf of said corporation by authority of its Board of Directors, and further acknowledges that the said instrument and the execution thereof to be the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official seal at \_\_\_\_\_, the day and year last above written.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

**ACKNOWLEDGMENT OF SURETY  
(Attorney-In-Fact)**

State of \_\_\_\_\_)  
  )ss  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me or satisfactorily proven to the person whose name is subscribed as attorney in fact for \_\_\_\_\_ and acknowledged that he/she executed the same as the act of his/her principal for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix my official seal at \_\_\_\_\_, the day and year last above written.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_



**EXHIBIT H**  
**PAYMENT & PERFORMANCE BOND**

**SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY  
SANFORD UNDERGROUND RESEARCH FACILITY  
(SURF) AT HOMESTAKE**

**ORE HONDO FAN BACKUP**

**Contract #2021-13**

**EXHIBIT G**

**PAYMENT AND PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, THAT WE

---

(Contractor)

hereinafter called "Principal," and

---

(Surety)

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 South Dakota Science and Technology Authority, hereinafter called "Obligee," in the just and full sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States of America to be paid to the Obligee, 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 an Agreement for Construction with Obligee, dated \_\_\_\_\_, 20\_\_\_\_\_, for the:

PROJECT NAME:

PROJECT LOCATION:     Sanford Underground Research Facility at Homestake  
                                  Lead, South Dakota

Contract #:

which Agreement for Construction 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 Agreement for Construction 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 Agreement for Construction, to work to be performed thereunder or to the specifications accompanying the Agreement for Construction 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 Agreement for Construction, 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 Agreement for Construction and Principal's 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 Agreement for Construction, this bond and the sureties thereon shall be responsible to such person, firm or corporation and to the Obligee 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\_\_\_\_\_.

**PARTNERSHIP OR CORPORATE PRINCIPAL**

By \_\_\_\_\_

\_\_\_\_\_  
Typed Name

Title \_\_\_\_\_

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

(Affix corporate seal if available)

\_\_\_\_\_  
Address

**INDIVIDUAL, PARTNERSHIP OR CORPORATE SURETY**



State of \_\_\_\_\_ )  
 )ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, who acknowledged him/her self to be the \_of \_\_\_\_\_, a corporation, and that he/she, as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by him/her self as \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

**ACKNOWLEDGMENT OF SURETY  
(Corporate Officer)**

State of \_\_\_\_\_ )  
 )ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public in and for said \_\_\_\_\_ County, personally appeared \_\_\_\_\_ personally known to me, who being by me duly sworn, did say that he/she is the aforesaid officer of the of \_\_\_\_\_, a corporation duly organized and existing under the laws of the State of \_\_\_\_\_, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that the said instrument was signed, sealed and executed in behalf of said corporation by authority of its Board of Directors, and further acknowledges that the said instrument and the execution thereof to be the voluntary act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official seal at \_\_\_\_\_, the day and year last above written.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

**ACKNOWLEDGMENT OF SURETY  
(Attorney-In-Fact)**

State of \_\_\_\_\_ )  
 )ss  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me or satisfactorily proven to the person whose name is subscribed as attorney in fact for \_\_\_\_\_ and acknowledged that he/she executed the same as the act of his/her principal for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix my official seal at \_\_\_\_\_, the day and year last above written.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

**EXHIBIT I**  
**CERTIFICATE OF EXEMPTION**

# South Dakota Streamlined Sales Tax Agreement Certificate of Exemption

## Warning to purchaser:

This is a multi-state form. Not all states allow all exemptions listed on this form. Purchasers are responsible for knowing if they qualify to claim exemption from tax in the state that is due tax on this sale. The state that is due tax on this sale may be notified that you claimed exemption from sales tax.

The purchaser will be held liable for any tax and interest, and possible civil and criminal penalties imposed by the member state, if the purchaser is not eligible to claim this exemption.

1.  **D** Check if you are attaching the Multistate Supplemental form.

2.  **SD** If not, enter the two-letter abbreviation for the state under whose laws you are claiming exemption.

**D** Check if this certificate is for a **Single Purchase Certificate**. Invoice/purchase order# \_\_\_\_\_

3. A. Name of purchaser  
South Dakota Science and Technology Authority

B. Business address City State Zip code  
630 East Summit Street Lead SD 57754

C. Purchaser's tax ID number State of Issue County of Issue

D. If no tax ID number, enter FEIN  
1018-1308-RG

E. If no ID number or FEIN, enter Driver's License Number/State Issued ID number state of issue

F. Foreign diplomat number

G Name of seller from whom you are purchasing, leasing or renting

H. Seller's address City State Zip code

4. **Purchaser's Type of business.** Circle the number that best describes your business.

- 01 Accommodation and food services
- 02 Agriculture, forestry, fishing, hunting
- 03 Construction
- 04 Finance and insurance
- 05 Information, publishing and communications
- 06 Manufacturing
- 07 Mining
- 08 Real estate
- 09 Rental and leasing
- 10 Retail trade
- 11 Transportation and warehousing
- 12 Utilities
- 13 Wholesale trade
- 14 Business services
- 15 Professional services
- 16 Education and health-care services
- 17 Nonprofit organization
- 18 Government
- 19 Not a business
- 20 Other (explain)

5. **Reason for exemption.** Circle the letter that identifies the reason for the exemption.

- A Federal government (Department) ----- H Agricultural Does not apply in SD
- 8 State or local government (Agency) Tourism/State Devel. I Industrial production/manufacturing \_\_\_\_\_
- C Tribal government J Direct pay permit
- D Foreign diplomat K Multiple points of use (services, digital goods, or computer software delivered electronically)
- E Charitable organization L Direct mail
- F Religious or educational organization M Other (Explain) -----
- G Resale

6. I declare that the information on this certificate is correct and complete to the best of my knowledge and belief 1/24/2021  
 Sign \_\_\_\_\_ Print name here \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_



