

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

**AGREEMENT FOR CONSTRUCTION  
SDSTA CONTRACT #2020-10  
Installation of Potable & Industrial Water Lines at Ross Complex**

**THIS** Agreement is made the **30<sup>th</sup> day of July, 2020**, by and between **R.C.S Construction, Inc. 1314 Fountain Plaza Dr. Rapid, City, SD 57702**, (the "Contractor") and the **SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY**, 630 East Summit Street, Lead, SD 57754 (the "Owner"). **WITNESSETH**, that the Contractor and the Owner for the consideration stated herein agree as follows:

**ARTICLE I  
CONTRACT DOCUMENTS**

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

1. This Agreement for Construction
2. Request for Proposal issued \_\_\_\_\_ and accompanying specifications and drawings
3. General Conditions
4. Contractor EHS Questionnaire
5. Contractors Proposal dated March 31, 2020
6. Payment and Performance Bond
7. Construction EHS Manual

These documents constitute the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations, or agreements, either written or oral. In the event of a conflict between the terms of the Request for Proposal and the Contractor Proposal, the Request for Proposal shall govern.

**ARTICLE II  
STATEMENT OF WORK**

To the extent not otherwise provided in the Contract Documents, Contractor shall furnish and pay for all labor, tools, equipment, supplies, materials, appurtenances, utilities, charges, fees, permits, and all other construction accessories and services required to complete the Work specified in the Contract Documents in strict compliance with the Contract Documents

**ARTICLE III  
DATE OF COMMENCEMENT AND COMPLETION, LIQUIDATED DAMAGES**

- A. The work shall be commenced within ten (10) consecutive calendar days after the date of issuance of the Notice to Proceed by the Owner and shall be completed no later than **July 30, 2021**, subject to adjustments of the contract time as provided in the Contract Documents.
- B. In the event Contractor fails to substantially complete the work within the time agreed to above, Contractor shall be liable for **liquidated damages** in the amount of **\$100.00 (ONE HUNDRED DOLLARS)** per day, as more fully provided in Section 9.3.7 of the General Conditions.

**ARTICLE IV  
CONTRACT SUM**

- A. For the performance of the work specified in the Contract Documents, Owner will pay Contractor and Contractor will accept as full compensation the sum of **\$1,398,811.97 (one million three hundred ninety-eight thousand**

**eight hundred eleven and ninety-seven cents**), subject to additions or deductions as provided in the Contract Documents;

B. Contract Sum includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: **None**

C. Unit Prices, if any, are as follows: **None**

**ARTICLE V  
PROGRESS PAYMENTS**

The Owner shall make progress payments on a monthly basis for work accomplished in accordance with General Conditions, Article 10.

**ARTICLE VI  
ACCEPTANCE AND FINAL PAYMENT**

Final payment less amounts withheld to cover the cost of nonconforming work, shall be made by the Owner in accordance with General Conditions Article 10.7.

**ARTICLE VII  
NOTICE**

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

**If to Contractor:**

RC Scull  
R.C.S Construction, Inc.  
1314 Fountain Plaza Dr.  
Rapid City, SD 57702  
[rc@resconst.com](mailto:rc@resconst.com)

**If to Owner:**

Mike Headley  
Executive Director  
SD Science and Technology Authority  
630 East Summit Street  
Lead, SD 57754  
605-722-8650  
[mheadley@sanfordlab.org](mailto:mheadley@sanfordlab.org)

Timothy M. Engel  
Counsel for the SDSTA  
May, Adam, Gerdes & Thompson LLP  
503 S. Pierre Street, P.O. Box 160  
Pierre, SD 57501  
605-224-8803

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

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

**CONTRACTOR: R.C.S CONSTRUCTION, INC.**

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

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

(Affix Corporate Seal if Available)

**OWNER: SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY**

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Mike Headley  
Executive Director

Date





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

**INSTALLATION OF POTABLE & INDUSTRIAL  
WATER LINES AT ROSS COMPLEX**

**Contract #2020-10  
R.C.S Construction, Inc.**

**GENERAL 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 intended use and 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 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 without the express written permission of the Owner or as otherwise required by law.

### **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 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.

## **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 three working

days after receipt of written notice from the Owner or in such time as may be established in written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, or if the Work is not being performed properly or in accordance with the scheduling provisions of the Contract Documents in any material respect, whether or not the Contractor is in default, the Owner may, after the expiration of such notice period and without prejudice to any other remedy 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 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 sole judgment of the Owner, an emergency exists as a result of the Contractor's default, neglect or failure to correct defective work, which in the Owner's opinion, requires more immediate corrective action than the Contractor is able to provide, then the Owner may, without notice to the Contractor, perform such corrective work or cause it to be performed by others. The Owner shall also have the right to carry out the Work, or any part thereof, during the period of any work stoppage without terminating the Contract. If the Owner wishes to exercise this right it will give the Contractor three days' notice of its intent to do so. In any such case, an appropriate deductive Change Order shall be issued in accordance with Article 13, the amount of which shall not exceed an amount which equals the estimated 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, at any time, for the purpose of observation, or testing, or to install other work, either with its own forces or with separate contractors. Such access is not to be construed to mean partial occupancy by Owner, and no claim for additional compensation by the Contractor because of such access or installation of work will be considered. Contractor shall cooperate with Owner during Owner's access or performance of work.

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

Allan Stratman  
South Dakota Science and Technology Authority  
630 East Summit Street  
Lead, SD 57754  
Business: 605-722-5044  
Email: [astratman@sanfordlab.org](mailto:astratman@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.

**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 of any defect in equipment, material, or 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.

**5.4.2** This warranty shall continue for a period of 1 year from the date of final acceptance of the Work. If 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 Owner takes possession.

**5.4.3** The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Owner-owned or controlled real or personal property, when that damage is the result of-

**5.4.3.1** The Contractor's failure to conform to contract requirements; or

**5.4.3.2** Any defect of equipment, material, workmanship, or design furnished.

**5.4.4** The Contractor shall restore any Work damaged in fulfilling the terms and conditions of Warranty. In the event of repairs or replacement under the terms of this Warranty, the Contractor's warranty with respect to Work repaired or replaced will be extended and will continue for 1 year from the date of repair or replacement.

**5.4.5** Owner shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

**5.4.6** If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Owner shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

**5.4.7** With respect to all warranties, express or implied, from Subcontractors, manufacturers, or suppliers for work performed and materials furnished under the Agreement for Construction, the Contractor shall:

**5.4.7.1** Obtain all warranties that would be given in normal commercial practice;

**5.4.7.2** Require all warranties to be executed, in writing, for the benefit of Owner; and

**5.4.7.3** Enforce all warranties for the benefit of Owner. In the event the Contractor's warranty under subsection 5.4.2 has expired, Owner may bring suit at its expense to enforce a Subcontractor's, manufacturer's, or supplier's warranty.

**5.4.8** Unless a defect is caused by the intentional act or omission or negligence of the Contractor or Subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by Owner nor for the repair of any damage that results from any defect in Owner-furnished material or design.

**5.4.9** 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 this Article 5.4, whether the loss arises before or after the Owner's acceptance of the Work.

**5.4.10** 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:

**5.4.10.1** 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.

**5.4.10.2** Provide for complete repair or replacement of defective equipment or material.

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

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

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

**5.4.-10.6** 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 5.4.10.5 or should the remedy of repair or replacement otherwise fail.

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

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

**5.4.11** Nothing in this Article 5.4 or elsewhere in the Contract Documents shall relieve the Contractor or any Subcontractor, manufacturer, or supplier of any tier of liability for any defect which manifests itself or is otherwise discovered after the warranty and guarantee period provided for herein.

**5.5 Taxes:** The Contractor shall pay all sales, consumer, use, excise, and other similar taxes for the Work or portions thereof which are to be provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective. The determination of the applicability of any particular tax and the amounts due is the responsibility of the Contractor. The Contractor is directed to the South Dakota Department of Revenue for inquiries concerning taxes which may be due.

<https://dor.sd.gov/businesses/taxes/>

## **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 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 **RC Scull**

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

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

**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 Shop 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 Shop Drawings, Product Data and Samples required by the Contract Documents.

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

**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 Shop Drawing, Product Data, Samples or related submittals according to the schedule or otherwise in a manner which does not allow adequate lead time for 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 Shop 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 Shop 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 Shop Drawings is accurately and clearly shown, that Contractor has checked the Shop Drawings against the Composite Drawings prepared by the Contractor, that the Work has been coordinated and that the equipment will fit into the assigned spaces, and that 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 Shop 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 Shop Drawing, Product Data and Sample had been submitted.

**5.8.5.2** Shop Drawings shall bear a coordination and approval stamp signed by the Contractor and each contiguous Subcontractor, which shall confirm the representations set forth in Article 5.8.5. Shop 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 Shop 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 Shop 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 a Shop Drawing, Product Data or Sample 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 when a particular manufacturer or manufacturers are specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, Contractor shall be responsible for such loss unless he promptly gives such information to the Owner in writing.

## **5.14 Indemnification**

**5.14.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, and its consulting engineers, and their respective successors, agents and employees from and against all claims, damages, liabilities, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any tortious act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation or indemnity which would otherwise exist as to any party or person described in this Article 5.14.

**5.14.2** In any and all claims against the Owner, or any of its consultants, and their respective successors, agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 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 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 and expert witness 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

## **5.15 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 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 default by Contractor under the Contract, Owner shall have the right to take such measures as it deems necessary to correct the default, at the Contractor's sole cost and expense, and to deduct such costs, including but not limited to the 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** 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.** Without limiting the generality of the foregoing, Contract acknowledges the site where the Work is to be performed is also occupied by one or more contractors doing work in connection with the Long Baseline Neutrino Facility ("LBNF"). Said contractors are not under contract with or under the control of Owner. The Owner will, however, utilize its best efforts to coordinate the Work to be undertaken by the Contractor with the work being undertaken in connection with LBNF.

**7.1.3** 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 Contractor 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, without respect to the conflict of laws provisions thereof.

**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 30 days after the first discovery of such injury or damage.



**8.5 Payment and Performance Bond:** Before commencing the Work, the Contractor shall provide a Payment and Performance Bonds in the forms attached hereto as Exhibit F.

## **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.

## **8.8 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 state 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 for which it is intended, and such Work is fully completed in accordance with the Contract Documents except for minor items, adjustments or corrections which have no material effect upon the utilization, function or intrinsic values of the entire Project, including all of its mechanical, electrical and other systems and facilities.

**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 of the 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, in which case such extension of time shall be the Contractor's sole remedy for such delay 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 for Construction as liquidated damages for each calendar day of delay until the Work is substantially complete. The parties recognize it would be impracticable or extremely difficult to fix the actual damages resulting from a delay in substantial completion of the Work, and that the amount set out in the Agreement for Construction is fair and reasonable. 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.

**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 days-notice at the Contractor's cost and expense, to furnish such additional labor and to expedite deliveries of materials (or the Owner may furnish such labor and expedite such deliveries at the cost of the Contractor), which labor or expediting shall, in the Owner's opinion, be sufficient to speed up and complete the Work in accordance with the Construction Completion Schedule.

**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.

**9.3.7** Should the contractor fail to substantially complete the construction project with-in the time frame (July 30, 2020– July 30, 2021), Contractor shall be liable for liquidated damages in the amount of **\$100.00 per day**. 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 Work within the time specified in the Contract.

## **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 in forms acceptable to Owner.

**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/mailed 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 certificates of insurance policies to the Authority for review and approval.

**12.3** By executing this Contract, Contractor authorizes the Authority to make direct inquiry of Contractor's insurer or insurance agent concerning the status of the insurance required by this Agreement.

## **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 Shop 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.

**15.2 Termination by the Owner**

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

Prior to termination of the Contract, the Owner shall give the Contractor and 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. 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.

## **EXHIBIT A**

### **TO GENERAL CONDITIONS**

#### **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 not less than \$5 million per occurrence. 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 foregoing are sometimes referred to herein collectively as the “Homestake Indemnified Parties”); and the South Dakota Science and Technology Authority, its officers, agents, employees and representatives. All additional insureds coverage must include current and completed operations.
  2. Business automobile liability insurance with limits not less than \$1 million per occurrence. Such insurance shall include coverage for owned, non-owned and hired automobiles.
  3. Professional liability coverage with limits not less than \$1 million per claim.
  4. Workers compensation insurance as required by South Dakota law.
- 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 CG 00 01 12 07, or its equivalent.
  2. Waive the insurer’s right of subrogation against the Homestake Indemnified Parties.
  3. State that it is primary and non-contributory and shall apply without consideration for other policies carried by the Homestake Indemnified Parties.
  4. Include a provision that the insurer will not raise any coverage defense based on any constitutional or statutory immunity of the State of South Dakota, the South Dakota Science and Technology Authority, or 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, reserving the right to obtain replacement coverage if Contractor does not and deducting the cost from the contract total.
- 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. Contractor agrees to provide complete, certified copies of all required insurance policies if requested by the Authority.
- 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  
TO GENERAL CONDITIONS**

**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>. MHSA 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, 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 Contractor included in its bid a separate line item for any PPE unique to the scope. 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 it or its employees are 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 was 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  
TO GENERAL CONDITIONS**

**SCOPE OF WORK**

Description of project that construction services are required:

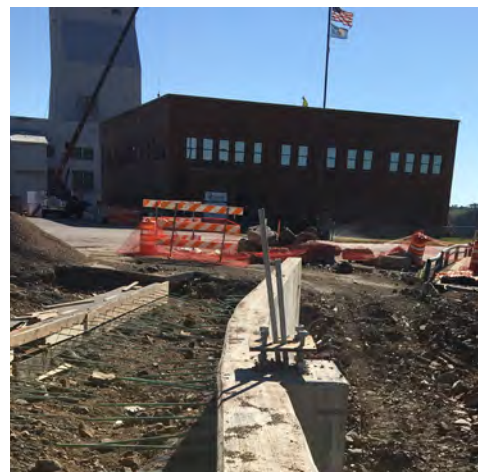
The work includes: Installation of 2549 feet of 8” PVC & steel potable water line and 950 feet of 6” PVC Industrial water line, along with four fire hydrants, one 6” water meter and concrete pit, asphalt/concrete removal and replacement of 357 tons of class E asphalt patch and incidental related work and all appurtenances according to the accompanying set of engineered drawings and specifications.

**EXHIBIT D  
TO GENERAL CONDITIONS**

**CONTRACTOR'S PROPOSAL**

# South Dakota Science and Technology Authority Installation of Potable & Industrial Water Lines at Ross Complex Request for Qualification

March 31, 2020





# RCS CREW - YATES SHAFT REHABILITATION

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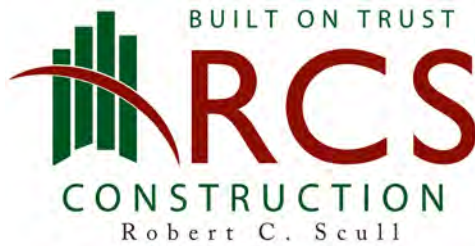
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March 31, 2020

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

**Subject: Installation of Potable & Industrial Water Lines at Ross Complex RFP #2020-10**

Dear Michele,

We are pleased to submit our proposal for the Installation of Potable and Industrial Water Lines at Ross Complex. We understand the importance of this project. The RCS team has the experience needed to complete the project and work with South Dakota Science and Technology Authority. We believe RCS Construction is the right partner because we have **1) The Right People 2) A Proven Process and 3) A Track Record of Delivering Remarkable Results** on projects similar to the Installation of Potable & Industrial Water Lines at Ross Complex.

**Expertise** - RCS Construction's approach to accomplishing the scope begins with our team of highly qualified professionals that will provide superior, quality service to this project. As you examine our proposal, we believe you will find that our team provides outstanding value in our knowledge pertaining to the Installation of Potable and Industrial Water Lines at Ross Complex. RCS will provide the administration and safety over-site to ensure this project is on schedule and performed in a safe environment.

Our teams' experience and underlying philosophies serve as the source of our value. This project represents what we do "all day, every day" and we are excited to work with SDSTA to produce not only a fully optimized project, but a highly enjoyable and productive project experience. Some of the benefits our team provides include:

**Strong Project Management, Local Knowledge, and Quality Control** - RCS will provide the South Dakota Science and Technology Authority a local level of technical expertise to handle any and all future potable and industrial water lines at Ross Complex. We are very familiar with the Ross Complex and have a great understanding of the updates/retrofits being pursued by SDSTA.

RCS has a great working relationship with SDSTA and will ensure all your current and future needs are met with the expectation of quality service every time.

**Availability and Experience** - Our project team is available to begin work immediately and have the resources and experience to complete this project in a timely and cost-effective manner. We are committed to be responsive to your needs as the project proceeds.

In summary, you will find that RCS is an exceptionally well-qualified team of professionals and would like to work with SDSTA to construct this important project.

Thank you for your consideration. We look forward to exceeding the SDSTA expectations.

Sincerely,  
The RCS Construction, Inc.

*RC Scull*

RC Scull  
President, RCS Construction, Inc.

## Qualifications of the firm and the specific individuals who will be assigned to the work.

### Year Established

RCS Construction was established in January 1992.

### Key Personnel who will be Assigned to the Project

The strength of RCS Construction is built on the expertise and character of our team members. These professionals have been specifically selected not only for their experience, innovation and professional credentials, but also for their personality traits and past experience building success. The individuals presented herein represent the ideal combination of characteristics to maximize the benefits of the project.

**The highest level of experience and knowledge.** Each team member has “been there, done that” and will provide the SDSTA with the benefits of decades of industry specific experience and technical expertise through preconstruction and commissioning.

**Positive personalities to excel in the collaborative team environment.** Individuals with enthusiastic and positive personalities build trust among all team members and serve as catalysts for highly effective and productive communications.

**Highly efficient, highly productive.** The RCS team leaders are professionals who thrive on getting things done. Our team will establish and promote a culture of efficiency for the entire group. The list below represents our key personnel and their titles.

RC Scull, President of RCS Construction  
Evan Walterman, Project Manager  
Perry Van De Steeg, General Superintendent  
Wes Hall, Project Superintendent  
Derek Nisly, Safety Manager  
Lance Hubbard, Onsite Safety Manager

In addition to the individuals highlighted, many others will serve important roles on the RCS team. Our extended team of estimators, schedulers, accountants, record keepers, procurement specialists, project specialists and others will all work to contribute to the project.

### We Strive to Build a Brighter Future

We are faced with countless daily challenges in pursuit of excellence. RCS shares in this commitment and pursuit. The SDSTA is faced with daily challenges and demands the highest standard of quality and communication. Our team responds with a commitment to collaboration, a high level of expertise, and a strong sense of responsibility.

### Collaboration to Maximize Value

RCS is a proven team with significant experience in designing, planning, servicing, and completing projects. Over 60% of our work is delivered under a collaborative approach coupling design and construction to drive value for our clients. We understand when an owner brings our team on board early in the process, it is our responsibility to add and create value for the entire team, finding ways to save time and money.

### Preconstruction Services

RCS is committed to listening, planning, and executing our client’s goals. We believe a successful construction project is the result of a well-planned, budgeted, and organized pre-construction plan. With RCS Construction’s approach to pre-construction services, we are committed to making decisions with both the project’s and client’s best interests in mind. This helps ensure we perform in a way that meets our client’s requirements and exceeds expectations for a greater level of client satisfaction. Our clients and their communities have benefited from the power of pre-construction.

## POWER of Pre-construction

We believe a **successful** construction project is the **result** of a well-planned, budgeted, and organized **pre-construction plan.**

## Communication

We promote open communication through weekly O/A/C meetings, weekly contractor meetings, and pre-installation meetings. O/A/C meetings continue the flow of information and provide a good forum for making decisions and maintaining the pace of the project. Mandatory weekly contractor meetings review all aspects of the project, including submittals, RFIs, design changes, safety, schedule, and highlight areas of concern that may require additional coordination. Pre-installation meetings discuss, in detail, certain scopes of work prior to their start. All of these meetings help reinforce quality expectations, address any access concerns before work begins and ultimately save time, money, and effort. At each meeting we will cover, in detail, work to be performed over the next two to four weeks, potential impacts to the schedule, major project milestones that may need to be targeted, trade partner manpower and coordination.

Our team will actively manage the document process of construction including RFIs, submittals, design changes, ASIs, etc. and track each item separately. One key to the success of any project will be to pro-actively manage the submittal and procurement process so onsite work can be maintained throughout the construction.



## Schedule & Logistics

During the scheduling process we will work closely with SDSTA to develop a schedule acceptable to all parties. For your project our team will develop and maintain a detailed construction schedule. Our team's ability to maintain the project progress schedule, adjust to potential field and coordination issues, and address changes during the project, will relate directly to our schedule accuracy.

## The Timing is Right

We recognize the critical importance the project team has in insuring a successful construction project. The SDSTA would have the project managers full attention. For this reason, extensive efforts are made to properly staff projects with personnel who we consider the best fit and most capable in meeting both the Owner's and project requirements.

We currently have our top team available for this project, so the timing for us could not be better.

Our proposed team's expertise and track record in completing projects like this is second to none. We are ready to hit the ground running for the Installation of Potable and Industrial Water Lines at Ross Complex.



## **Constructability Review from a Utility Contractor's Perspective**

Our evaluation of the design for the installation of the potable and industrial water lines at Ross Complex is based on the understanding that the practicality of construction is interrelated to safety, quality, schedule, and cost. With the RCS team, SDSTA will benefit from the experience of individuals who have spent their careers engaged in the construction of sewer and water utilities, water booster stations, and waste water treatment facilities. Each aspect of the project will be subject to review from consideration of issues such as site access, material delivery, storage and staging logistics, employees parking, and site safety.

A sample of constructability review considerations for this project includes:

- **Construction Limits:** This will have an impact on how the project is scheduled and constructed.
- **Truck and Traffic Patterns:** These can affect efficiency and safety.
- **Excavation:** Using trench boxes 100% of the time will provide protection to the public, minimize disruption to other trades, and keep our employees safe.
- **Bore:** The most difficult part of this project will require a great deal of coordination with SDSTA, Kiewit, and Fermi, and all other trades in the area to get this done safely.
- **Tie-ins and Interface:** Connecting to an existing system is always something that needs to be analyzed and re-analyzed until all parties are comfortable with the plan.

Constructability reviews for this project will be performed on a continual process enabled by open communication from all parties on the entire team.

### **Approach**

RCS understands the complexity and coordination required to construct a project of this magnitude within the busy Ross Yard. In just the past year, we have worked for several of the entities that will be directly coordinated with to construct this project. Currently, we are working with KAJV completing sitework, concrete and general trades work throughout the facility as a part of the 1A Pre-Excavation Phase. Last spring, we worked with FERMI to install the Oro Hondo VFD E-House. We are currently are in negotiations on a \$7 million dollar overhaul to the Ross Brakes, Clutches and Hoists in the Ross Hoist building. As a result, the RCS project team has not only knowledge of the site and operations, but also good working relationships with the construction teams of the two entities that this project will impact. We understand that significant planning and coordination will be required throughout the project to ensure it can be delivered successfully while minimizing impact to current work operations within the facility. Wes Hall will be the on-site superintendent – bringing over 20 years of utility experience to ensure the project is built safely and at a high level of quality. Perry Van De Steeg – RCS General Superintendent will be involved with weekly coordination and planning, providing over 25 years of experience to work through any problems or issues that may arise.

### **Bore**

RCS Construction will utilize an experienced team to complete the bore under the Ross Head Frame. Wes Hall has successfully completed 25 miles of pipe bursting on the Ellsworth Airforce Base between 2003 – 2009 in addition to numerous bores. Basil Wagner will operate the boring machine and lead the boring operations providing oversight and coordination of this bore. Basil has successfully completed 300 bores over a span of 15 years all over the state since 2004. RCS recently bored a 24" diameter, 63-foot-long steel casing under Hwy 14A as a part of the TIF No. 10 project which carries storm water from the parking garage under the newly constructed DoubleTree hotel, part of the Cadillac Jack's Casino. Our estimators, Wes, and Basil met to review the conditions and came up with the game plan to successfully complete your challenging bore.

## **Past Performance with respect to cost control, quality of work, and compliance with performance schedules.**

### **Approach to Quality Assurance**

RCS Construction understands the quality of the project remains long after the project is over. We take pride in our work and know our reputation rests in the quality of the finished project.

Our project plan includes implementation of a comprehensive Quality Control Plan (QCP), not only through review and inspection of all design documents and construction activities, but also through development of a culture of quality within all work activities on the jobsite. Our QCP will ensure that all construction activities and the finished work comply with the design and reflect the highest level of workmanship. Our experience has proven that a successful Quality Control Plan requires:

- Management support from the highest level
- Collaboration in the QCP development
- Clear delineation of QA/QC responsibility and establishment of accountability
- Early focus during preconstruction
- Immediate attention to any quality related issues
- A culture of quality throughout all stakeholders for the duration of the project
- The commitment of each trade subcontractor to provide quality work

Effective Quality Control begins long before the first construction activity takes place. Communicating, understanding, and evaluating the requirements, desires and expectations of project stakeholders with respect to Quality Control during the preconstruction phases will set the stage for the successful execution thereof during construction.

During construction, Quality Control includes monitoring, testing and inspection to confirm compliance or exceeding of requirements of the QCP and design documents. These activities are most visibly evident on the jobsite but may include responsibilities off the project site such as fabrication shop audits, warehouse or store-room inspections or visits to other locations as deemed necessary.

The most effective Quality Control during construction is derived from solid construction planning and practice. The abilities of RCS Construction in effective subcontractor management results from our experiences as a self-performing contractor. During day-to-day observation and our expectation of “doing the right thing” of each subcontractor, we are in effect ensuring that each is taking the steps we would normally take to ensure a high-quality final product.

### **Project Controls, Systems and Optimization**

RCS Construction understands the importance of accurate estimating and cost control throughout the project duration. Such cost certainty starts with effective estimating. Our team includes full-time estimators dedicated to producing accurate cost analyses, with hundreds of such projects estimated. The estimates are generated using a dataset of cost and man hours that is continuously updated based on real-time feedback from our ongoing direct operations on construction projects.

## **Subcontractors**

For all the construction we do, we rely on quality subcontractors who have worked with us for many years to help us complete projects either on time or ahead of schedule and within budget, often with our choice and ability to pass cost savings on to the Client. Our clients know we always make an effort to tap into local subcontractors, vendors and suppliers to put money back into the people and local economy in communities where we are working. We have developed a “Local Participation Plan” that includes a database of local subcontractors that has been accumulated over many years and added to per specific project needs by utilizing local newspapers, both our Client’s website, and multiple plan rooms.

We prefer to work with local subcontractors due to their local ownership and vested interest in the project. Not only do the construction dollars stay in the area, but the service and response time is usually better from someone closer to the project and a member of the community.

RCS Construction’s subcontractor qualification process is designed to evaluate a prospective subcontractors approach to quality, financial stability and track record for success. We desire to work with those subcontracts who share a similar passion for exceptional quality and superior craftsmanship. Both vendors and subcontractors will be selected on the basis of experience, references, financial stability, quality of work, quality personnel, projected workload, claim and litigation history, as well as bonding capabilities.

RCS Construction plans on working with Wolff’s Plumbing and Heating, performing interior plumbing work and Sacrison Paving, performing asphalt patching on the Installation of Potable and Industrial Water Lines at Ross Complex.

## **Wolff’s Plumbing and Heating**

Wolff’s Plumbing and Heating is owned by Greg Hartman, Scott Hartman, Dan Hartman and Ben Arambel. The company has been in business since 1946. Irvin Hartman worked for the previous owners until he purchased the business with his son’s , Greg and Scott, and eventually Dan and Ben. Wolff’s Plumbing and Heating is experienced in all aspects of plumbing, heating, ventilation, and air conditioning.

Among our 37 employees we carry many years of experience in commercial, residential, and service applications. Wolff’s Plumbing and Heating won the Construction Industry Center’s Master Craftsmanship Award for their work on the Davis Campus at the Sanford Lab, as well as the Black Hills State University Central Plant Upgrades.

Wolff’s Plumbing and Heating prides itself on quality finished projects and excellent customer service throughout the building process. We appreciate every one of our customers and enjoy helping in any way we can. We are a family owned business that values our employees and their families.







Year 2019

U.S. Department of Labor  
Occupational Safety and Health Administration

Form approved OMB no. 1218-0176

# OSHA's Form 300A (Rev. 01/2004) Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases		
Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction
0 (G)	2 (H)	6 (I)
		6 (J)

Number of Days	
Total number of days away from work	Total number of days of job transfer or restriction
22 (K)	40 (L)

Injury and Illness Types		
Total number of... (M)	(1) Injury	(4) Poisoning
8	0	0
0	0	0
0	0	0
0	0	0

Public reporting burden for this collection of information is estimated to average 58 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave. NW, Washington, DC 20210. Do not send this completed form to this office.

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

### Establishment information

Your establishment name RCS Construction, Inc.  
Street PO Box 9337 City Rapid City State SD Zip 57709  
Industry description (e.g., Manufacture of motor truck trailers) General Construction  
Standard Industrial Classification (SIC), if known (e.g., SIC 3715) 1 5 4 2  
OR North American Industrial Classification (NAICS), if known (e.g., 336212) \_\_\_\_\_

### Employment information

Annual average number of employees \_\_\_\_\_  
Total hours worked by all employees last year 177,265.00

### Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Robert C. Scull II Company executive President Title  
(605)342-3787 Phone 12/2020 Date



OSHA's Form 300A (Rev. 01/2004)

Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 307 or its equivalent. See 29 CFR 1904.35, in OSHA's recordkeeping rule. For further details on the access provisions for these forms.

Number of Cases		
Total number of deaths	Total number of cases with job transfer or restriction	Total number of other recordable cases
0 (G)	1 (H)	0 (J)

Number of Days	
Total number of days away from work	Total number of days of job transfer or restriction
1 (K)	62 (L)

Injury and Illness Types				
Total number of... (M)				
(1) Injury	2	(4) Poisoning	0	
(2) Skin Disorder	0	(5) Hearing Loss	0	
(3) Respiratory Condition	0	(6) All Other Illnesses	0	

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including time to review the instruction, search and gather the data needed, and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 700 Constitution Ave. NW, Washington, DC 20210. Do not send the completed forms to this office.

Establishment Information	
Your establishment name	RCS Construction, Inc.
Street	1314 Fountain Plaza Drive
City	Rapid City
State	South Dakota
Zip	57702
Industry description (e.g., Manufacture of motor truck trailers)	General Construction
Standard Industrial Classification (SIC), if known (e.g., SIC 3715)	
OR North American Industrial Classification (NAICS), if known (e.g., 336212)	
Employment Information	
Annual average number of employees	97
Total hours worked by all employees last year	183,731
<b>Sign here</b>	
Knowingly falsifying this document may result in a fine.	
I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.	
Robert C. Scull II Company executive	Vice President Title
605-342-3787 Phone	1862018 Date



**OSHA's Form 300A (Rev. 01/2004)**

**Summary of Work-Related Injuries and Illnesses**

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

**Number of Cases**

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0 (G)	1 (H)	2 (I)	2 (J)

**Number of Days**

Total number of days away from work	Total number of days of job transfer or restriction
4 (K)	110 (L)

**Injury and Illness Types**

Total number of... (M)	(1) Injury	5	(4) Poisoning	0
(2) Skin Disorder	0	(5) Hearing Loss	0	
(3) Respiratory Condition	0	(6) All Other Illnesses	0	

**Post this Summary page from February 1 to April 30 of the year following the year covered by the form**

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave. NW, Washington, DC 20210. Do not send the completed forms to this office.

**Establishment information**

Your establishment name R.C.S. Construction, Inc.  
 Street PO Box 9337  
 City Rapid City State SD Zip 57709  
 Industry description (e.g., Manufacture of motor truck trailers)  
General Construction  
 Standard Industrial Classification (SIC), if known (e.g., SIC 3715)  
 OR North American Industrial Classification (NAICS), if known (e.g., 336212)

**Employment information**

Annual average number of employees 85  
 Total hours worked by all employees last year 186,682

**Sign here**

**Knowingly falsifying this document may result in a fine.**

I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Robert C. Scull Company executive President Title  
 605-342-3787 Phone 201/2017 Date





## WORKERS COMPENSATION RATING

YEAR	MOD	WORKER'S COMPENSATION
2019	0.79	0.84 3 Year Average
2018	0.88	
2017	0.85	0.89 5 Year Average
2016	0.97	
2015	0.94	

### Safety

RCS Construction is highly committed to the safety and well-being of our workforce including subcontractors and the clients we serve. Our 2019 EMR is 0.79 and our 5 year average EMR is 0.84 which is well below the construction standard of 1.2.

Our team believes safety is much more than a plan, a program, or requirement. It is simply our ethical responsibility and the way we do business. Our project team, made up of our on-site superintendent, safety manager, and project management staff is dedicated to overseeing the risk management program. Our superintendent will lead the safety effort and our safety manager, Lance Hubbard, will remain involved in the day-to-day operations to ensure all parties involved are clear with their safety responsibilities.

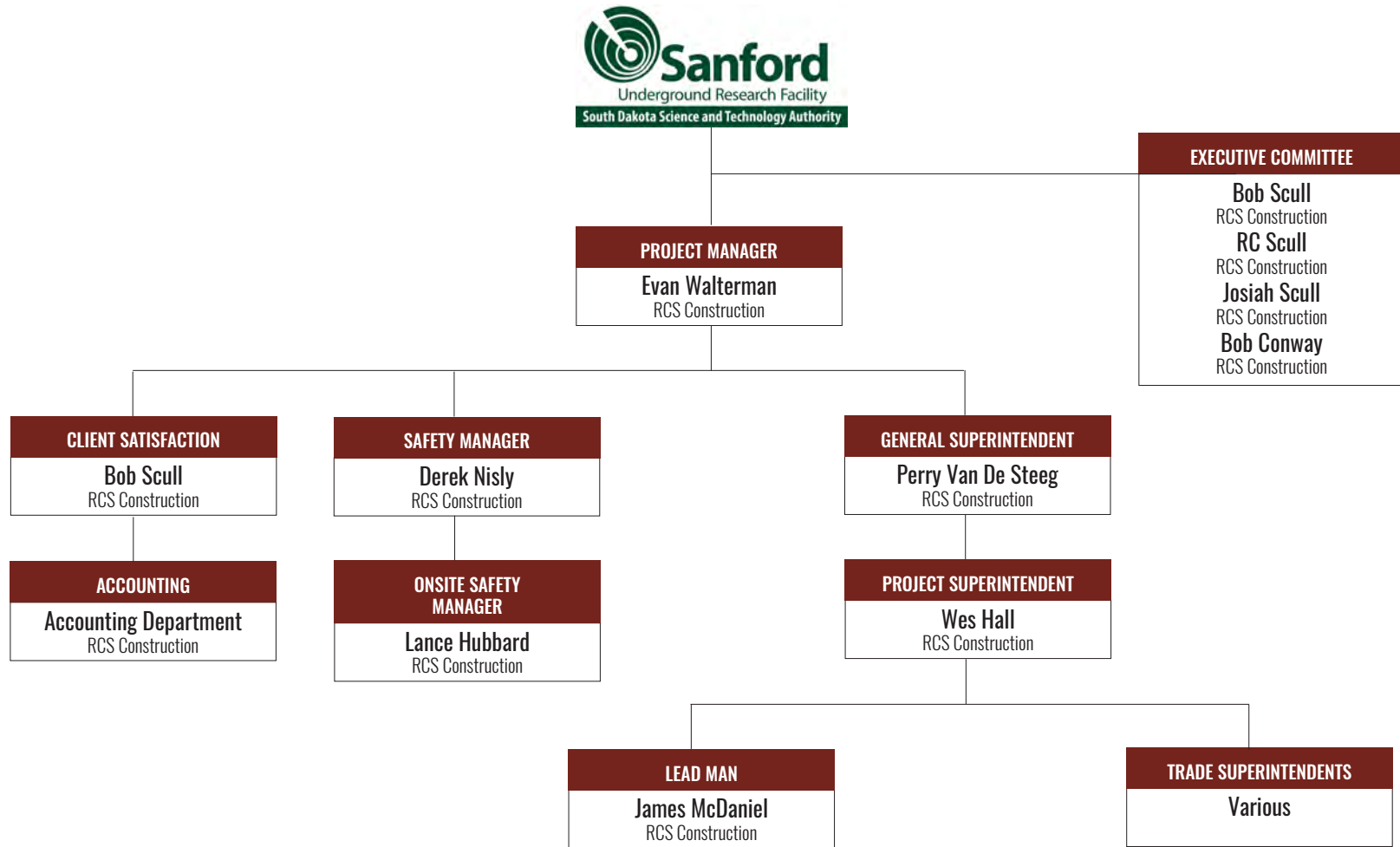
Each of our project management staff have at least the 10 hour OSHA training, and project superintendents all have the 30 hour OSHA training, and in addition to the 10 and 30 hour OSHA training all of our project staff, superintendents, and field staff are required to complete annual OSHA training seminars that are job specific. Every project we oversee has a project and site-specific safety plan, and we employ mandatory pre-employment drug screening, new hire safety orientations, weekly tool box safety talks, weekly project safety inspections, and full monthly safety audits. In addition, to our full time safety manager, we hire a 3rd party safety consultant to evaluate all of our projects monthly to ensure the plan is effective throughout the course of a project.

We have raised the bar for numerous companies' safety programs. With that said, it is mandatory for each trade partner to submit their company safety program and conduct weekly tool box safety meetings. On projects over one million, new employee orientations will be mandatory for all construction workers on the project site. The orientation will provide a basic assurance that all construction staff is aware of job site specific rules and guidelines essential to jobsite safety.

During construction, our onsite safety manager, Lance Hubbard, will be onsite everyday for two to three hours conducting regular safety inspections and monitoring the tasks at hand. Safety manager, Derek Nisly, will perform a weekly safety inspection as a second set of eyes. Immediate action will be taken for any deficiencies noticed. All deficiencies are documented and sent to the trade partner's site superintendent and project manager to ensure compliance is maintained.



# Organizational Chart for Preconstruction and Construction Phases





## RC SCULL President (Partner)

### PROFESSIONAL EXPERIENCE

RCS Construction, Inc., 2013-Present

- 20% Stock Ownership
- Responsible for overseeing all aspects of projects while in progress
- Responsible for providing all closeout documentation at the end of the project

### WORK HISTORY

Baker Hughes, North Dakota  
Directional Driller, 2011-2013

RCS Construction, Inc., Rapid City, SD  
Part-time Project Manager, Estimator, Equipment Operator,  
and Laborer, 2000-2011

### TRAINING/ACTIVITIES

City of Rapid City Class A Contractor License  
 City of Rapid City Contractor Sewer & Water License  
 Rapid City Trenching Board- Past President  
 SD AGC Heavy Highway/Utility Chapter - Vice President  
 AGC Rapid City Municipal Utilities Committee- Past President  
 Leadership Rapid City Graduate-2016  
 Dale Carnegie Training  
 Topcon Grade Control Level 1 Certified  
 ASHE Certification: Certified Health Care Physical  
 Environment Worker  
 American Red Cross First Aid/CPR  
 30 Hour OSHA

### EDUCATION

SDSM&T Master’s in Construction Management  
 SDSM&T Bachelor’s Degree in Civil Engineering

### NOTABLE PROJECTS

**Gillette, WY Digester Tank - Gillette, WY**  
2019 | \$475K | City of Gillette

**Willow Street - Rapid City, SD**  
2018 | \$2.5M | City of Rapid City

**Meadowbrook School Drainage Imp - Rapid City, SD**  
2018 | \$917K | City of Rapid City Area Schools, 51-4

**Summerset WWTP Effluent Filter & SBR Enclosure -  
Summerset, SD**  
2017-2018 | \$2.2M | City of Summerset

**East Idaho Street - Rapid City, SD**  
2017-2018 | \$4.6M | City of Rapid City

**Water Treatment Facility & Distribution System  
Improvements - Edgemont, SD**  
2017 | \$1.4M | City of Edgemont

**Baldwin Street Reconstruction - Rapid City, SD**  
2016-2017 | \$4.3M | City of Rapid City

**Maple Avenue and Nevada Street - Rapid City, SD**  
2016 | \$1.3M | City of Rapid City

**Box Elder Northern Lights Water Storage - Box Elder, SD**  
2015-2016 | \$2.1M | City of Box Elder

**S. Middle School Storm Sewer Relocation - Box Elder, SD**  
2015-2016 | \$593K | Rapid City Area School District 51-4

**East Signal Drive Reconstruction - Rapid City, SD**  
2015 | \$2.7M | City of Rapid City

**SDSM&T Water Infiltration - Rapid City, SD**  
2015 | \$242K | Office of the State Engineer

**Oglala Sioux Rural Water Supply System - Pine Ridge, SD**  
2015 | \$1.5M | Oglala Sioux Tribe

**Twilight Drive & Anderson Road - Rapid City, SD**  
2014-2015 | \$2.0M | City of Rapid City

**Porcupine School Repairs - Porcupine, SD**  
2013 | \$976K | Porcupine School Board





## PERRY VAN DE STEEG General Superintendent (Partner)

### PROFESSIONAL EXPERIENCE

RCS Construction, Inc., 1996-Present

- 12% Stock Ownership
- In charge of running underground utilities and dirt work projects. Arranging schedules, organizing crews, reading plans and grades. Able to operate trackhoe, dozer, front-end loader, compacting roller, bobcat and other heavy equipment, installation of sewer, water and storm sewer pipe.

### WORK HISTORY

Morris, Inc., Rapid City, SD

Department Manager, 1991-1996

### TRAINING/CERTIFICATIONS

City of Rapid City-Sewer & Water Contractor License

State of South Dakota-Sewer & Water Plumbing

Contractor License

30 Hour Osha Training

Topcon Grade Control Level 1 Certified

MSHA Training

American Red Cross First Aid/CPR

### EDUCATION

Eastern Montana College

Black Hills State University

Special Interests: Business Administration

### NOTABLE PROJECTS

**Jackson Boulevard - Spearfish, SD**

2019-In Progress | \$3.89M

**Reservoir Road Trunk Sewer Extension - Rapid City, SD**

2018 | \$2.2M

**East Idaho Street - Rapid City, SD**

2017-2018 | \$4.6M

**Tilford Rest Area Removal - Tilford, SD**

2017 | \$112K

**Deadwood TIF No. 10 - Deadwood, SD**

2016-2017 | \$2.8M

**BHSU Pangburn Hall Demo - Spearfish, SD**

2016 | \$153K

**Baldwin Street Reconstruction - Rapid City, SD**

2016-2017 | \$4.3M

**East Signal Drive & Crescent Drive - Rapid City, SD**

2015 | \$2.6M

**Twilight Dr & Anderson Rd Water Main Extension - Rapid City, SD**

2014 | \$2M

**Parkview ASA Softball Fields - Rapid City, SD**

2013-2014 | \$1.4M

**Silver Street Area Improvements - Rapid City, SD**

2013 | \$1M

**Canyon Lake Drive Reconstruction - Rapid City, SD**

2011-2012 | \$9M

**Oak Avenue - Rapid City, SD**

2013-2014 | \$1.8M

**Roosevelt Park Phase 3 - Rapid City, SD**

2008-2009 | \$501K



**EVAN WALTERMAN**  
Project Manager/Estimator

### PROFESSIONAL EXPERIENCE

RCS Construction, Inc., 2017-Present

### WORK HISTORY

Lind-Exco Inc., Rapid City, SD  
Project Manager/Estimator, 2015-2017  
Daktronics, Brookings, SD  
Student Project Manager, 2014-2015

### TRAINING/ACTIVITIES

DOT Erosion & Sediment License  
SD Sewer & Water Installer License  
CPR/AED  
OSHA 30 Hour  
Topcon Grade Control Level 1 Certified  
President of the A.G.C. Young Constructors

### EDUCATION

SDSU Bachelor's Degree in Construction Management

### NOTABLE PROJECTS

- KAJV Pre Excavation 1A - Lead, SD**  
2019-In Progress | \$1.56M
- Pine Ridge Lift Station - Pine Ridge, SD**  
2019-In Progress | \$1.31M
- Jackson Boulevard - Spearfish, SD**  
2019-In Progress | \$3.89M
- Spearfish WWTP - Spearfish, SD**  
2019-In Progress | \$674K
- EAFB Industrial Facility 3015 - EAFB, SD**  
2018-In Progress | \$828K
- Keystone WWTP - Keystone, SD**  
2018 | \$715K
- Keystone Phase 1 Sewer Improvements - Keystone, SD**  
2018 | \$156K
- Ridgewood Cul de Sac Development - Lead, SD**  
2018 | \$983K
- Steelpony Campground - Sturgis, SD**  
2018 | \$969K
- Meadowbrook School Drainage Improvements - Rapid City, SD**  
2018 | \$927K
- Mollers/Eastbrook Subdivision - Rapid City, SD**  
2018 | \$248K
- Lead - Deadwood Pump Replacement - Lead, SD**  
2018 | \$359K
- E. Idaho St., E Nevada St., Ivy Avenue St. & Utility Reconstruction - Rapid City, SD**  
2018 | \$4.8M
- Woodstave Penstock Replacement - Spearfish, SD**  
2017 | \$730K
- Grizzly Gulch Box Culvert - Lawrence Co., SD**  
2017 | \$113K





## **WES HALL** Superintendent

### **PROFESSIONAL EXPERIENCE**

RCS Construction, Inc., 1998-Present

### **WORK HISTORY**

Heavy Constructors, Inc., Rapid City, SD  
Foreman / Equipment Operator, 1990-1998

- Operating track hoe, dozer, front-end loader, compacting roller, bobcat, excavator and other heavy equipment
- Arranging schedules, organizing crews, reading plans, and grades.

### **TRAINING/CERTIFICATIONS**

Sewer & Water Plumbing Contractor License- State of SD  
City of Rapid City Sewer and Water Installer License  
Certified in McElroy Fusion Welding Machines  
CPR & First Aid Certified- Red Cross of America  
Topcon Grade Control Level 1 Certified  
DOT Traffic Control

### **NOTABLE PROJECTS**

**Youth & Family Services Expansion - Rapid City, SD**  
2018 | \$8.7M

**Deadwood Pavilion - Deadwood, SD**  
2018 | \$415K

**East Idaho Street, Rapid City, SD**  
2017-2018 | \$4.6M | City of Rapid City

**Grizzly Gulch Box Culvert - Lawrence Co., SD**  
2017 | \$113K

**TIF No. 10 Public Work - Deadwood, SD**  
2016-2017 | \$2.7M

**Oak Avenue Pipe Bursting - Rapid City, SD**  
2016-2017 | \$110K

**Habitat Garfield Green Project - Rapid City, SD**  
2016-2017 | \$294K

**Skyline Wilderness Park Trailhead Development - Rapid City, SD**  
2015-2016 | \$1.5M

**Rushmore Shadows RV Park - Rapid City, SD**  
2016 | \$883K

**Roubaix Lake Road Paving - Black Hills Nat'l Forest**  
2014 | \$374K

**Rapid Chevrolet Cadillac - Rapid City, SD**  
2013-2014 | \$14.5M

**Interior Waste Water Treatment - Interior, SD**  
2012 | \$369K

**Canyon Lake Drive Reconstruction - Rapid City, SD**  
2011-2012 | \$9M

**Red Cloud School Lift Station - Pine Ridge, SD**  
2009-2010 | \$622K



**DEREK NISLY**  
Safety Manager

**PROFESSIONAL EXPERIENCE**

RCS Construction, Inc., 2019-Present

**WORK HISTORY**

Waipahu, HI/Maui County Division  
Associate/Project Engineer/Construction Manager 2007-2019

**EDUCATION**

Bachelor of Science, Health and Physical Education  
Western Oregon State College

**TRAINING/CERTIFICATIONS**

Forklift Train the Trainer  
MSHA New Miner  
Silica Awareness

**TRAINING/CERTIFICATIONS CONTINUED**

Competent Person Training  
HDOT, Field Testing and Sampling Certification  
OSHA 30 Hour  
Certified Construction Manager  
Certified Inspector of Sediment and Erosion Control  
ACI Concrete Field-Testing Tech.- Grade 1  
DOT Certified Flagging Instructor  
AGC Safety Committee  
South Dakota Safety Council Member  
National Safety Council Member  
Intro to Safety Instructor  
Intro to Loss Control Instructor  
Introduction to Health Instructor  
SD Work Place Certificate  
OSHA 510

**SECTOR EXPERIENCE**

- Detailed job site inspections
- Crew safety compliance
- Inspection of PPE
- Recommendations concerning the modification, improvement, or removal of any company equipment that is hazardous to employee health or safety
- Maintains all site required documentation related to safety issues
- Ensure all employees are in compliance with OSHA standards

**NOTABLE PROJECTS**

**Hanover Drive - Rapid City, SD**  
2019-In Progress | Hard Bid | \$289K

**Knollwood Drainage Basin - Rapid City, SD**  
2019-In Progress | Hard Bid | \$179K

**Wanblee Lift Station - Wanblee, SD**  
2019-In Progress | Hard Bid | \$248K

**Pine Ridge Hospital Addition - Pine Ridge, SD**  
2019-In Progress | Design-Build | \$5.9M

**The Club for Boys - Rapid City, SD**  
2019-In Progress | \$1.4

**National Guard Readiness Center - Rapid City, SD**  
2019-In Progress | \$16.2M

**Youth & Family Services - Rapid City, SD**  
2019-In Progress | \$8.6M

**Black Hills Surgical Hospital - Rapid City, SD**  
2019 | \$1.6M







## LANCE HUBBARD

### Onsite Safety Manager

#### PROFESSIONAL EXPERIENCE

##### 2016 Safety Manager, RCS Construction - Rapid City, SD

SDSTA Parking Lot and Sidewalk | Lead, SD | \$736K

- Completed/Maintained JHA's
- Oversaw safety of demolition of sidewalks, parking lot and retaining walls, parking lot including sidewalks, C-walls, handrails, concrete snow dump/gate and new parking lot
- Interacted on a daily bases with officials of SDSTA

##### 2013 Safety Manager, RCS Construction - Rapid City, SD

Sanford Roof Replacement | Lead, SD | \$74K

- Supervised safety for the removal and replacement of existing roof- South Side
- Worked with RCS crews to install #30 underlayment, new 26 ga Pro-Pael II galvalume metal roofing

##### 2013 Safety Manager, RCS Construction - Rapid City, SD

Yates Hoist Room | Lead, SD | \$96K

- Supervised reinforced structural steel in roof
- Completed/Maintained JHA's

##### 2013 Safety Manager, RCS Construction - Rapid City, SD

Sanford Lab Waterline | Lead, SD | \$24K

- Oversaw new water line from cities existing water line into Ross complex

##### 2010 Safety Manager, RCS Construction, Inc. - Rapid City, SD

Mine Decant Project | Lead, SD | \$592K

- Supervise installation of 3000 feet plus of pipeline
- Proposed alterations to original scope of work to streamline original concept. These alterations streamlined the completion of the project and made a more efficient water management system
- Implemented all applicable regulatory guidelines to augment existing safety programs

##### 2008-2010 Safety Director, RCS Construction, Inc. - Rapid City, SD

Yates Shaft Rehabilitation | Lead, SD | \$8.9M

- Supervised replacement of support beams in shaft to the 4850' level
- Worked in conjunction with RCS supervision and crews, created SOP's and JHA's to complement the existing HASP
- Maintained files of 5-point cards, mobile equipment pre-operation cards, tool box talks, incident/accident reports
- Interacted on a daily bases with officials of both the SDSTA and DUSEL

##### 2004-2008 Foreman, Wheeler Lumber & Bridge - Whitewood, SD

##### 2002-2003 Miner, Tier, Inc., - Pittsburgh, PA

Homestake Mine

- Removal and clean-up of all materials and appurtenances of the existing 4800 Davis Laboratory
- Supervise removal of related materials at Radar Hill Road near Rapid City, S.D. and other locations

**2001-2002 Miner, Laguna Construction Company - Deadwood, SD**

- Rerouting and installation of underground pipelines
- Supervise bulk excavation/placement of waste dump material to finish grade

**1999-2001 Self Employed, Bogus Creek Ranch, Whitewood, SD**

- Normal Maintenance and production activities associated with relatively small cattle operation

**1997-1999 Miner, Stillwater Mining Company - Nye, MT**

- Worked in all phases of underground production and development mining using both mechanized and traditional mining methods

**1996 Construction Foreman, Dead Horse Mine - Edgemont, SD**

**1987-1996 Environmental/Safety Coordinator, Brohn Mining Corporation - Deadwood, SD**

- Development of comprehensive acid rock drainage (ARD) mitigation plan
- Design and construction of a conventional chemical co-precipitation water treatment plant for treatment and discharge of metals laden ARD
- Primary author of Lawrence County Conditional Use Permit (CUP)
- Integral part of both State (SDDENR) and Federal (NEPA-EIS) permitting team
- Worked close with world recognized consultants in hydrology, geochemistry and multi-media cap and liner design
- Management of ongoing local, state and federal regulatory monitoring and reporting requirements, safety programs, security functions, and Workman’s Compensation claims
- Helped develop both short and long term mine permitting and operating strategy
- Developed, implemented, and managed all safety and security programs at Gild Edge Gold Mine
- Investigated and managed all Workmen’s Compensation cases
- Integral part of permitting and start-up team
- Supervision of temporary, permanent, and contract employees

**1983-1987 Construction Foreman/Production Supervisor, Kerr-McGee Coal Corporation - Galatia, IL**

- Design, layout and construction of SDSTAace and underground conveyor belt installations, ventilations appurtenances
- Supervised drill and blast operations where necessary
- Supervised production flow at operating face
- Operated all types of underground diesel and electric coal mining and support equipment
- Member of underground Mine Rescue Team

**1981-1983 Senior Safety Engineer, Mine Contractors**

- Work closely with corporate Safety Department (Kerr-McGee) to develop, implement and manage safety personnel programs designed to maintain “union free” status at Southern Illinois coal mine
- Manage all aspects of regulatory compliance and helped to complete construction and operation permit

**1978-1981 Metal/Non-Metal Mine Inspector, Homestake Mining Company - Lead, SD**

- Open-cut and fill, timber cut and fill, shrinkage stopping, development work, haulage and maintenance

**EDUCATION**

A.A. Coal Mining Technology

National Mine Health & Safety Academy

Black Hills State College

Wabash Valley College, Centerville, IL

Beckley, WV

Spearfish, SD



# **WOLFF'S PLUMBING & HEATING**

## **SCOTT HARTMAN**

**Mechanical Project Manager (Partner)**

### **PROFESSIONAL EXPERIENCE**

Wolff's Plumbing and Heating, Inc., 1978-Present

### **NOTABLE PROJECTS**

- Education and Outreach Center, Sanford Lab, Lead, SD 2019
- Yates Dry Water Heater Replacement, Peter Kiewit, Sanford Lab, Lead, SD 2019
- River Ridge Apartments Boiler, Rapid City, SD 2019
- Rapid City Education Center/YMCA 2018-2019
- Bison School District Plumbing, Bison, SD 2018-2019
- Good Samaritan Apartments at Sage View Glen, 2018-2019
- Ross Hoist Room Boiler Replacement- Sanford Lab, Lead, SD 2017
- Westhills Village Courtyard Assisted Living Facility, 2016-2018
- Black Hills Urgent Care, Spearfish, SD 2016
- Stevens HS Science-Link Addition 2015-2016
- Black Hills State University, Crow Peak Hall Dormitory 2014-2015
- Westhills Village Healthcare HVAC Wing 2014
- Sundance Elementary 2015-2017
- Black Hills State University, Central Plant Upgrades 2012-2014
- RCRH Campus Office Building 2012
- Spearfish Regional Hospital OR #4- Spearfish, SD 2012-2013
- Western Dakota Technical Institute Addition, Rapid City, SD 2011-2012
- Davis Campus (4850 level of old Homestake mine) 2011-2012
- SDARNG Readiness Center at Camp Rapid, SD 2009-2011
- Black Hills State University, New Science Building 2009-2010
- SD State Health Lab, Pierre, SD 1996
- Crow/Northern Cheyenne Healthcare Facility, Crow Agency, MT 1995
- SD State Health Lab, Pierre, SD 1996
- Crow/Northern Cheyenne Healthcare Facility, Crow Agency, MT 1995

## OWNER

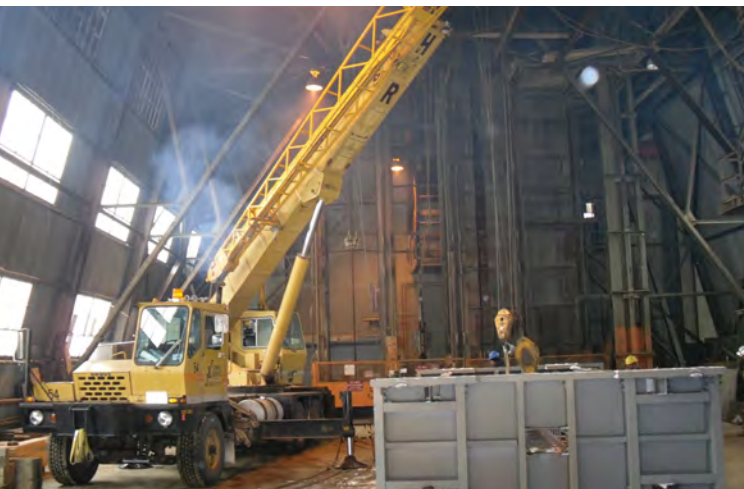
SD Science & Technology Authority  
John Matthesen  
605-722-8650 ext 227

## CONTRACT

SD Science & Technology Authority  
\$8.9M



## YATES SHAFT



2008

The Yates Shaft project included replacing shaft timber, electrical, water supply, communication cable, ground control, removing utilities, and bulkhead construction.



2020-10

## OWNER

Fermi Research Alliance LLC  
Tom Powers (630)840-4255  
trpowers@fnal.gov

## CONTRACT

Fermi Research Alliance LLC  
\$529K

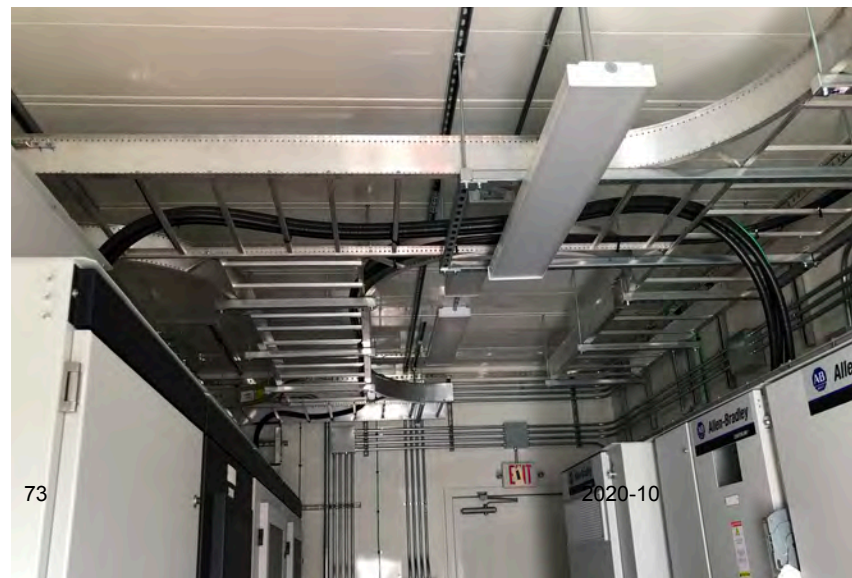


## FERMI ORO HONDO E-HOUSE



2019-2020

The LBNF Fermi Oro Hondo E-House project consisted of site removals and preparations, removal of existing E-House building, setting of new E-House unit, electrical rough-in and wiring of E-House, remove and replace existing motor bearings and properly align motor to fan (by Elite Industrial), remove and replace exciter from motor shaft (by Komastu).



## OWNER

City of Rapid City  
Roger Hall  
605-394-4154

## ENGINEER

Longbranch Engineering (was Sperlich)  
Kale McNaboe  
kale.mcnaboe@sperlichconsulting.com

## CONTRACT

City of Rapid City  
\$2.1M



# WILLOW AVENUE, IVY AVENUE, EAST FAIRLANE DRIVE



2018-2020

The Willow Avenue, Ivy Avenue, East Fairlane Drive, Street and Utility Reconstruction included the reconstructing the sewer, water, storm sewer, constructing the drainage improvements, full reconstruction of the streets with asphalt and portland cement concrete (PCC) paving, and ADA sidewalks and driveways.



## OWNER

City of Rapid City  
Klare Schroeder  
Klare.Schroeder@rcgov.com

## ENGINEER

Ferber Engineering  
John Van Beek  
johnvanbeek@ferberengineering.com

## CONTRACT

City of Rapid City  
\$4.3M



## BALDWIN STREET



2016-2017

The project included the reconstruction of Baldwin Street between Wentworth Drive and South Berry Pine Road, 48th Street between Baldwin Street and Wedgewood Drive, Markay Place and Balmer Place in Rapid City. Specific reconstruction included new water mains and service lines, new sanitary sewer mains and service lines, storm sewer improvements, and the full reconstruction of the streets with either asphalt or Portland Cement Concrete (PCC) paving. ADA compliant sidewalks and driveways. New utilities were placed at a depth of 10 feet, or less, below existing grade.



## OWNER

City of Spearfish  
Adam McMahon (605)717-1127  
Adam.McMahon@cityofspearfish.com

## ENGINEER

AE2S  
Dustin Dale  
Dustin.Dale@ae2s.com

## CONTRACT

City of Spearfish  
\$3.6M



# JACKSON BOULEVARD ST AND UTILITIES IMPROVEMENTS



2019-2020

The Jackson Boulevard Street and Utilities Improvements project includes construction of improvements to include asphalt patching; mill and overlay; pavement striping; roadway signage; conversion of a 4-lane roadway to 5-lane roadway including bike lanes and medians(3rd Ave. to 5th Ave.); conversion of 4-lane roadway to 5-lane roadway including medians (5th Ave. to 10th Ave); construction of raised medians on N. Main St. (E. Kansas St. to E. Illinois St.); concrete flatwork, curb ramps and ADA improvements; storm sewer improvements, water line replacement, sewer line replacement; landscaping and irrigation system; traffic signals and street lighting.





## OWNER

City of Rapid City  
Klare Schroeder  
Klare.Schroeder@rcgov.com

## ENGINEER

Sperlich Consulting, Inc.  
Kale McNaboe  
kale.mcnaboe@sperlichconsulting.com

## CONTRACT

City of Rapid City  
\$4.7 Million



## EAST IDAHO STREET



2017-2018

The project was driven primarily by grading and heavy civil improvements, but it also added the baseball fields, a BMX track and four city blocks of utility and road work. Installation of 336 lineal feet of box culverts, a massive storm sewer impact basin and more than 100,000 cubic yards of grading to construct a new detention cell were included. RCS also reconstructed at the park a 1-mile paved walking path, built three new Little League baseball fields, and designed and constructed a new BMX track and concession building for Rapid City BMX, delivered under a design-build contract.



The East Idaho street project won the AGC Build South Dakota Award- Category II for outstanding Highway-Heavy-Utily Construction and also the Construction Industry Center Craftmanship Award.



## CITY OF RAPID CITY

### Department of Parks and Recreation

515 West Boulevard  
Rapid City, SD 57701  
(605) 394-4175 -- FAX (605) 394-5307

November 19, 2018

AGC of South Dakota  
300 East Capitol Avenue, Suite 1  
Pierre SD 57501

Re: Letter of Recommendation for Build South Dakota Award

On behalf of the City of Rapid City, I am pleased to provide a letter of recommendation for the approval of the nomination of RCS Construction, Inc. for the Build South Dakota Award for the E. Idaho, E. Nevada, Ivy Street and Utility Reconstruction and Meade/Hawthorne Drainage Element 221 Improvements project.

As the Parks Division Manager, my main concern of the project was the Robbinsdale Park Reconstruction portion of the project. This part of the project consisted of the construction of three little league baseball fields, a design/build BMX track with a new concession building, reconstruction of a one mile asphalt walking path and a mass grading project that required the movement of more than 100,000 cubic yards of material for construction of a storm water detention cell. The project was on a tight timeline to accommodate the opening of the BMX track and Harney Little League in time for their seasons along with seeding the entire area soon enough to take advantage of spring weather.

The contractor was able to accomplish moving all the material over the winter months in preparation for the spring. One big issue that was dealt with during the mass grading was a huge pocket of buried concrete that had to be moved. The concrete was apparently buried there from a previous project and the engineer was unaware of its existence. Even though the buried concrete measured in upwards of 3,000 cu yards the contractor was able to use the concrete in the base of the berms along Fairmont Boulevard and did not significantly disrupt the workflow.

In the spring the BMX track was designed and constructed along with the new concession building. The contractor was able to complete the track and the building in time for the season. In lieu of moving the old concession building the contractor constructed the new building at a significantly reduced price for the BMX group.

The three new baseball fields were constructed with concrete, backstops, bleachers, irrigation and seeding all completed before the completion date. Originally, only one field was to have an irrigation system but the league was able to secure funding to irrigate the rest of the fields which was completed at the same time.

**November 27, 2018**

**Subject:** AGC Build South Dakota Award  
E. Idaho Street, E. Nevada Street, Ivy Ave. Street and Utility Reconstruction Project  
RCS Construction

**RE:** Letter of Recommendation for Build South Dakota Award

On behalf of Sperlich Consulting, Inc., I am pleased to provide a letter of recommendation for RCS Construction with regards to the AGC Build South Dakota Award for the E. Idaho Street, E. Nevada Street, Ivy Avenue Street and Utility Reconstruction Project. The project was a great success for the City of Rapid City. This project included extensive reconstruction to regional stormwater facilities, the complete rehabilitation to approximately 2,800 lineal feet of residential streets, as well as the construction of new little league fields and BMX facility in Robbinsdale Park.

This project had many challenges during the course of construction. The single greatest challenge that RCS experienced was the abnormally high amount of rainfall throughout the construction season. On average the City of Rapid City receives 14.8 inches of rain between January and August. In 2018, the total rainfall from January through August was 26.3 inches. This higher than normal rainfall was a major hurdle to get over, especially due to a portion of the proposed reconstruction project being located in a FEMA floodplain. Approximately 1 square mile of drainage basin is located upstream of the regional stormwater facility. During the course of construction even minor rainfall would create high stormwater flows within the construction site.

During these rainfall events, RCS Construction always made it a priority to ensure residents in the street reconstruction area had adequate access to their homes. This included the installation of travel gravel and ensuring erosion and sediment control measures were in place whenever a rainfall event was near. Additionally, RCS Construction made it a point to check the jobsite during rain events to ensure access was maintained.

This proactive behavior was put to the test on May 18<sup>th</sup>, 2018. A major storm produced large amounts of rainfall in a short duration over portions of Rapid City. There are unofficial reports of 4 inches in some areas and has been identified as a 100-year storm event. This high intensity storm happened to be located over the drainage area discharging into the construction site, and resulted in the existing upstream drainage infrastructure exceeding capacity. Because the upstream drainage infrastructure exceeded capacity, an additional 2.5 feet of storm water was conveyed along Fairlaine Drive to the newly constructed detention cells. Fortunately, RCS Construction had just finalized the new drainage facility earlier that week. Straw mulch that had been installed after the seeding efforts had impaired the outlet structure and the newly constructed detention cell was emitting storm water over the emergency

spillway. RCS Construction notified the authorities as well as Sperlich Consulting, Inc.. RCS Construction stayed onsite for the night working with Sperlich Consulting and the authorities to ensure public safety. RCS Construction later worked with the City of Rapid City to mitigate damage caused by storm event. To their credit, no substantial mitigation was needed. Only minor grading, seeding, and debris cleanup was necessary in the project area.

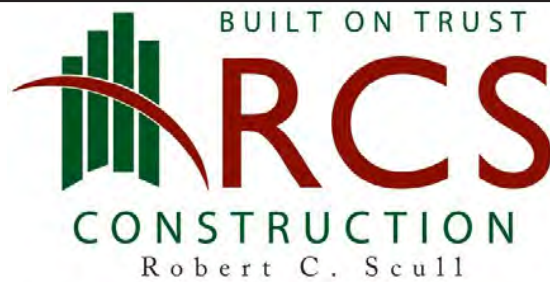
As the design engineer and QA/QC inspector for this project, collaboration between Sperlich Consulting, Inc. and RCS Construction was extensive. With any project, there are unforeseen challenges and changes to the design that occur during construction. RCS Construction has always made it a point to ensure these challenges are discussed and solved to ensure the final product is of the best quality. Much credit to RCS Construction should be given with regards to public relations. When working in a high-profile area such as a public park as well as the surrounding residential neighborhood, public interest concerns will arise. During the course of construction, RCS Construction has gone out time and time again to meet with residents and make special accommodations if necessary. This priority for good public relations allowed the project to run smoothly not only for RCS Construction but also for us as the engineer and the City of Rapid City.

As the Owner of Sperlich Consulting, Inc., and the Design Engineer for this project, I have worked with RCS Construction many times in the past. This project especially demonstrates the high degree of quality work that this company can accomplish. Additionally, their willingness to go that extra step when adversity strikes gives them high marks, and we look forward to working with RCS Construction on future projects.

Sincerely,



Kale R. McNaboe, P.E.  
Principal Engineer

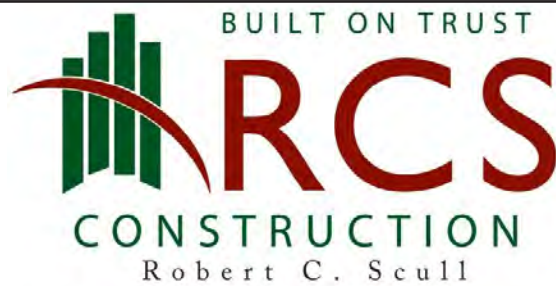


UTILITY WORK, SEWER & WATER CONTRACTS OVER FIVE HUNDRED THOUSAND

Year of Award	Project Name and Location	Project Engineer	Contract Amt
2019	Embers Way & Autumn Lane/Ridgewood Trail North Extension Lead, SD	AE2S	\$593,118.33
2019	Jackson Boulevard Street & Utilities Improvements Project – Phase 1 Spearfish, SD	City of Spearfish	\$3,894,989.13
2018	Willow Avenue, Ivy Avenue, East Fairlane Drive, Street & Utility Reconstruction Project Project No. 15-2254 / CIP No. 50421.3-1C Rapid City, SD	Sperlich	\$2,515,428.33
2018	BH Development Ridgewood Cul-De-Sacs Lead, SD	AE2S	\$880,541.00
2018	Reservoir Road Trunk Sewer Extension Project No. 15-2315/CIP No. 50328.1 Rapid City, SD	HDR	2,199,049.00
2017	E. Idaho Street, E. Nevada Street, Ivy Avenue Street & Utility Reconstruction & Meade/Hawthorne Drainage Element 221 Improvements Project No. 15-2253/CIP No. 50421.3-1B Rapid City, SD	Sperlich	\$4,662,263.00
2016	Maple Avenue & East Nevada Drive Street & Utility Reconstruction Project No. 13-2103/CIP No. 50421.3-2 Rapid City, SD	City of Rapid City	\$1,011,206.80
2016	Baldwin Street Reconstruction Rapid City, SD	City of Rapid City	\$4,239,778.00
2015	Rushmore Shadows Black Hills, SD	Midwest Outdoor Resorts	\$918,455.70
2015	South Middle School Storm Sewer Relocation (North Route) Rapid City, SD	Renner Associates, LLC	\$713,075.00
2015	Sanitary Sewer Main Extension – Clifton St & Ryther St Project No. 14-2155/CIP No. 50961.5 Rapid City, SD	City of Rapid City	\$658,977.03
2015	East Signal Dr & Crescent Dr St & Utility Reconstruction Project No. 12-2052/CIP No. 50949	Sperlich	\$2,681,531.42
2015	2015 Ramsdell Utility Improvements, Project B Spearfish, SD	HDR	\$1,390,233.00

CONFIDENTIAL INFORMATION OF RCS CONSTRUCTION, INC.

March 31, 2020

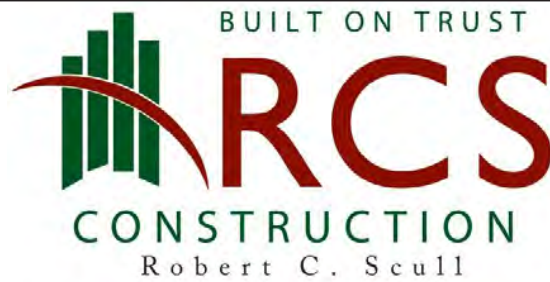


UTILITY WORK, SEWER & WATER CONTRACTS OVER FIVE HUNDRED THOUSAND

2014	RCRA#2 Twilight Dr./Anderson Rd. Water Transmission Main Extension Rapid City, SD	City of Rapid City	\$2,091,241.00
2014	Grandview Dr & Nevada Dr. – Robbinsdale Area Utility & Street Reconstruction. Project No. 13-2102/CIP No. 50421.3-4 Rapid City, SD	City of Rapid City Engineer	\$1,303,579.00
2013	Sanitary Sewer Rehabilitation Project Custer, SD	FourFront Design, Inc.	\$875,595.55
2013	So Berry Pine Rd SS Extension – Source Water Projection & W Main St SS Reconstruction Project No. 11-1957/CIP No. 50895 Rapid City, SD	City of Rapid City	\$507,232.06
2013	Reservoir Road 12142 Water & Sewer Utilities Rapid City, SD	City of Rapid City/Pennington County	\$1,529,153.15
2013	Silver Street Area Utility Improvements Phase 2 – Gold St Project No. 12-2020/CIP No. 50828 Rapid City, SD	City of Rapid City	\$1,100,040.00
2012	2011 Storm Damage Recovery Project Schedule A Rapid City, SD	Upper Deck Architects	\$894,699.00
2012	Water System Improvements – Phase II – Schedule B Sturgis, SD	Cetec Engineering Now AE2S	\$1,279,165.58
2011	Canyon Lake Drive Reconstruction Project No. WTP10-878/CIP No. 50004 Rapid City, SD	Ferber Engineering	\$9,187,631.37
2011	Corral Drive/Sheridan Lake Road Rapid City, SD	City of Rapid City	\$1,260,431.00
2010	Cliff Drive	City of Rapid City	\$606,154.00
2010	Fillmore & Ash Street Whitewood, SD	City of Whitewood	\$1,052,551.00
2010	Knollwood Drainage Outfall Elements 2 & 20 Rapid City, SD	City of Rapid City	\$2,120,216.00
2010	Oak Ave, Oak Dr, Oakland St – Phase Two Rapid City, SD	City of Rapid City	\$1,884,189.50
2009	Catron Blvd/Hwy 16 Sanitary Sewer Rapid City, SD	City of Rapid City	\$502,470.00
2009	Maple Avenue & East Idaho St Rapid City, SD	City of Rapid City	\$626,820.00
2009	44 <sup>th</sup> Street Reconstruction, Phase I	City of Rapid City	\$1,611,789.00

CONFIDENTIAL INFORMATION OF RCS CONSTRUCTION, INC.

March 31, 2020



WASTE WATER & WATER TREATMENT PLANTS

Year of Award	Project Name and Location	Project Engineer	Contract Amt
2020	Embers Way Lift Station Lead, SD	AE2S	\$339,000.00
2020	Spearfish WWTP Equalization Basin Spearfish, SD	City of Spearfish	\$647,722.61
2020	Wall North Well Wall, SD	DGR Engineering	\$1,060,194.62
2019	Pine Ridge Lift Station Pine Ridge, SD	Indian Health Service	\$1,316,320.27
2019	Wanblee Lift Station Wanblee, SD	Indian Health Service	\$248,383.79
2019	Chadron Tank Chadron, NE	Baker & Associates, Inc.	\$362,605.37
2019	Gillette, WY Digester Gillette, WY	Morrison-Maierle, Inc.	\$475,538.24
2019	Wanblee Lift Station Renovation Pine Ridge, SD	Indian Health Service	\$248,000.00
2018	Wall Well House Project Wall, SD	AE2S	\$274,000.00
2018	EAFB-Industrial Facility 3015 Ellsworth Air Force Base, SD	Ellsworth Airforce Engineers	\$828,000.00
2018	Keystone Well 3 Improvements Keystone, SD	AE2S	\$156,900.00
2017	WWTP Selected Pump Replacement Lead-Deadwood, SD	HDR Engineering, Inc.	\$355,400.00
2017	Keystone Phase 1 Sewer System Improvements Keystone, SD	AE2S	\$715,000.00
2017	WWTP Effluent Filter & SBR Enclosure Summerset, SD	HDR Engineering, Inc.	\$2,295,000.00
2017	Custer Water System Improvements Custer, SD	AE2S	\$547,354.27
2107	WRF Potable Water Improvements Project No. 15-2266/CIP No. 51079 Rapid City, SD	City of Rapid City	\$739,295.00
2017	WTF & Distribution System Improvements Edgemont, SD	AE2S	\$1,650,468.65
2016	College Well House Project	AE2S	\$387,500.00

CONFIDENTIAL INFORMATION OF RCS CONSTRUCTION, INC.

March 31, 2020

RCS CONSTRUCTION INC  
PO BOX 9337  
RAPID CITY, SD 57709-9337

August 20, 2019

Below is your current South Dakota tax license.

Please review this card. Please contact our department if there are any changes in ownership, names, or addresses.

If you have a Streamlined sales tax license any changes must be made through the Streamlined Registration System.

**Website:** <http://dor.sd.gov>  
**SD EPath:** <http://dor.sd.gov/EPath>

**Taxpayer Assistance Number:** 1.800.829.9188  
**Email:** [bustax@state.sd.us](mailto:bustax@state.sd.us)

**Streamlined Sales Tax Website:** [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org)



<http://dor.sd.gov>

ISSUE DATE: 01/27/1992

EXPIRATION DATE:

LICENSE NUMBER: 1016-1516-ET

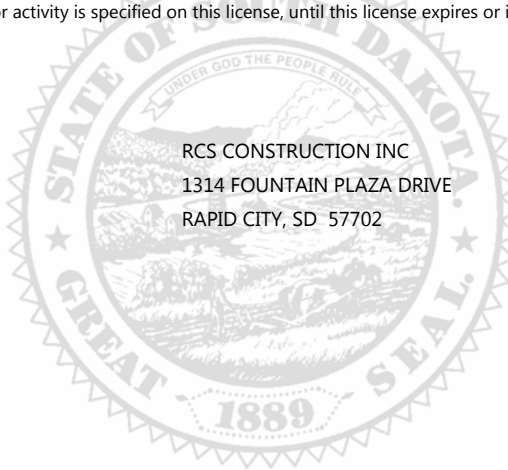
LICENSE TYPE: Contractor's Excise Tax

ISSUED TO:

RCS CONSTRUCTION INC  
1314 FOUNTAIN PLAZA DRIVE  
RAPID CITY, SD 57702

NON-TRANSFERABLE

Having made proper application therefore, and upon compliance with all applicable laws and regulations of the state of South Dakota, this license is hereby issued to the below named. This license remains the property of the state of South Dakota and while in possession of the person to whom issued, entitles the licensee to transact whatever business or activity is specified on this license, until this license expires or is cancelled.



RCS CONSTRUCTION INC  
1314 FOUNTAIN PLAZA DRIVE  
RAPID CITY, SD 57702

A handwritten signature in black ink that reads 'Jim Terwilliger'.

Jim Terwilliger  
Secretary of Revenue





# City of Rapid City Public Works Department

300 Sixth Street  
Rapid City, SD 57701  
Telephone (605) 394-4165 Fax (605) 355-3083

Company: RCS CONSTRUCTION INC

Type: CONTRACTOR

Sub Type: SEWER/WATER

License Number: AEC1783

Expiration: February 28, 2022

PO BOX 9337  
RAPID CITY, SD 57709

Phone: (605)342-3787  
Cell: (605)484-0118  
E-Mail: rc@rcsconst.com

Licensee: R C SCULL

PO BOX 9337  
(-)

RAPID CITY, SD 57709

## FEES

TYPE:	AMOUNT	ACCOUNT
SEWER AND WATER CONTRACTOR RENEWAL	\$ 100.00	10100001-325600

Renewal applications can be filed up to sixty days prior to expiration of the license. Licensees failing to renew their applications prior to expiration have a thirty day grace period during which to renew, before the licenses lapses. Licenses not renewed by the last bussiness day in March of the expiration year shall not be renewed until the applicant has submitted the application, paid the intial application fee, and passed the required exam if necessary.

**IT IS THE LICENSEE'S RESPONSIBILITY TO RENEW THEIR LICENSE PRIOR TO THE EXPIRATION DATE**

**Laminating your license card is recommended**



City of Rapid City  
Rapid City, South Dakota 57701  
Finance Department  
300 Sixth Street

**R C SCULL**  
CONTRACTOR SEWER/WATER

Finance Officer

License # AEC1783  
Expiration Date: February 28, 2022



City of Rapid City  
Rapid City, South Dakota 57701  
Finance Department  
300 Sixth Street

**R C SCULL**  
CONTRACTOR SEWER/WATER

Finance Officer

License # AEC1783  
Expiration Date: February 28, 2022

**License Not Valid Without Finance Officer's Signature**



# City of Rapid City Public Works Department

300 Sixth Street  
Rapid City, SD 57701  
Telephone (605) 394-4165 Fax (605) 355-3083

Company: RCS CONSTRUCTION

Type: CONTRACTOR

License Number: AEC687

PO BOX 9337  
RAPID CITY, SD 57709

Sub Type: SEWER/WATER

Expiration: February 28, 2022

Phone: (605)342-3787

Cell:

E-Mail: perryv@rcsconst.com

Licensee: PERRY VAN DE STEEG

PO BOX 9337  
(-)

RAPID CITY, SD 57709

## FEES

TYPE:	AMOUNT	ACCOUNT
SEWER AND WATER CONTRACTOR RENEWAL	\$ 100.00	10100001-325600

Renewal applications can be filed up to sixty days prior to expiration of the license. Licensees failing to renew their applications prior to expiration have a thirty day grace period during which to renew, before the licenses lapses. Licenses not renewed by the last bussiness day in March of the expiration year shall not be renewed until the applicant has submitted the application, paid the intial application fee, and passed the required exam if necessary.

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City of Rapid City  
Rapid City, South Dakota 57701  
Finance Department  
300 Sixth Street

**PERRY VAN DE STEEG**  
CONTRACTOR SEWER/WATER

Finance Officer

License # AEC687  
Expiration Date: February 28, 2022



City of Rapid City  
Rapid City, South Dakota 57701  
Finance Department  
300 Sixth Street

**PERRY VAN DE STEEG**  
CONTRACTOR SEWER/WATER

Finance Officer

License # AEC687  
Expiration Date: February 28, 2022

**License Not Valid Without Finance Officer's Signature**

**State of South Dakota  
SEWER AND WATER CONTRACTOR  
RAP-E1122-13-1224SWC  
SCULL, II, ROBERT CRAIG  
PO BOX 9337  
RAPID CITY, SD 57709**

**Expires December 31, 2020**

**State of South Dakota  
SEWER AND WATER CONTRACTOR  
RAP-E0411-03-1021SWC  
VAN DE STEEG, PERRY  
C/O PO BOX 9337  
RAPID CITY, SD 57709-9337**

**Expires December 31, 2020**

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

**INSTALLATION OF POTABLE & INDUSTRIAL WATER LINES AT ROSS  
COMPLEX**

**Contract #2020-10**

**EXHIBIT G**

**BID SECURITY**

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

**R.C.S. Construction, Inc.** \_\_\_\_\_  
\_\_\_\_\_

as Principal, and **Merchants Bonding Company (Mutual)** \_\_\_\_\_

as Surety, are hereby held and firmly bound unto the South Dakota Science and Technology

Authority, as Owner for the penal sum of **Ten Percent (10%) of the Total Amount Bid** \_\_\_\_\_

of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs,  
executors, administrators, successors and assigns.

Signed this 27th day of March, 2020.

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 [ **South Dakota Science and Technology Authority, Sanford  
Underground Research Facility (SURF) at Homestake, Installation of Potable & Industrial Water Lines at  
Ross Complex, Lead, SD, Contract #2020-10** ] Project at the  
Sanford Lab at Homestake.

Exhibit G - Bid Security  
Page 1 of 5

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.

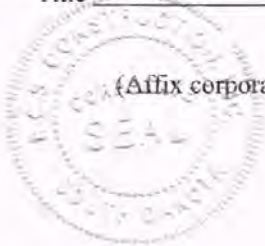
**PARTNERSHIP OR CORPORATE PRINCIPAL**

By Robert C. Scull II

Robert C. Scull II  
Typed Name

Title President

R.C.S. Construction, Inc.  
Business Name



(Affix corporate seal if available)

1314 Fountain Plaza Drive, Rapid City, SD 57702  
Address

**INDIVIDUAL, PARTNERSHIP OR CORPORATE SURETY**

By *G. Krier* \_\_\_\_\_ **Greg Krier** \_\_\_\_\_  
Typed Name

Title **Attorney-in-Fact** \_\_\_\_\_ **Merchants Bonding Company (Mutual)** \_\_\_\_\_  
Business Name

(Affix corporate seal if available) **P.O. Box 14498, Des Moines, IA 50306-3498** \_\_\_\_\_  
Address

Countersigned by *G. Krier* \_\_\_\_\_ **Greg Krier** \_\_\_\_\_  
Typed Name  
South Dakota Resident Agent

**Holmes, Murphy and Associates, LLC** \_\_\_\_\_  
Business Name

**5120 S. Solberg Avenue, Sioux Falls, SD 57108** \_\_\_\_\_  
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 \_\_\_\_\_

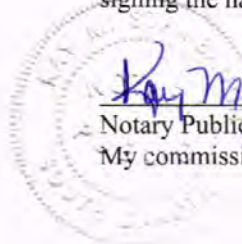
**ACKNOWLEDGMENT OF PRINCIPAL**  
**(Corporation)**

State of \_\_\_\_\_ )

Exhibit G - Bid Security  
Page 3 of 5

County of Pennington )ss

On this 27th day of March, 2020, before me personally appeared Robert C. Scull II, who acknowledged him/her self to be the President of R.C.S. Construction, Inc., a corporation, and that he/she, as such President, 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 President.



Kay M. Stambaugh  
Notary Public  
My commission expires November 28, 2024

**ACKNOWLEDGMENT OF SURETY  
(Corporate Officer)**

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

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 \_\_\_\_\_

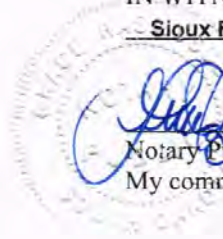
**ACKNOWLEDGMENT OF SURETY  
(Attorney-In-Fact)**

State of South Dakota )  
County of Lincoln )ss

Exhibit G - Bid Security  
Page 4 of 5

On this 27th day of March, 2020, before me personally appeared Greg Krier, known to me or satisfactorily proven to the person whose name is subscribed as attorney in fact for **Merchants Bonding Company (Mutual)** 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 Sioux Falls, SD, the day and year last above written.





Notary Public Grace Rasmussen  
My commission expires September 15, 2021

Exhibit G - Bid Security  
Page 5 of 5



# MERCHANTS BONDING COMPANY™ POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

**Greg Krier**

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 5th day of March, 2020.

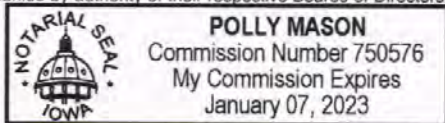


MERCHANTS BONDING COMPANY (MUTUAL)  
MERCHANTS NATIONAL BONDING, INC.

By *Larry Taylor*  
President

STATE OF IOWA  
COUNTY OF DALLAS ss.

On this 5th day of March, 2020, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.



*Polly Mason*  
Notary Public

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 27th day of March, 2020.



*William Warner Jr.*  
Secretary

POA 0018 (1/20)



# Sanford

## Underground Research Facility

### South Dakota Science and Technology Authority

CONSTRUCTION COST BID SHEET				DATE:		3/31/20	
PROJ: Industrial/Potable Waterline & Hydrant Replacement: Ross Complex							
ESTIMATOR: R.C.S. Construction, Inc. - Robert C. Scull II							
LOC Lead, SD				PROJECT NO: RFP #2020-10			
Contractor:							
DIV.	DESCRIPTION	QUAN	UNITS	UNIT COST	X-TEND	SUB-TOTAL	
<b>01 GENERAL CONDITIONS</b>							
	Mobilization	1	LS	289,857.13	289,857.13		
	Traffic Control	1	LS	23,808.61	23,808.61		
<b>03 CONCRETE</b>							
	Concrete Vault for Water Meter (Industrial)	1	EA	29,269.38	29,269.38		
	Saw Cut Rectangular hole in Headframe Basement Wall	1	LS	17,375.26	17,375.26		
	Penetration of Ramp wall(s)	1	LS	8,092.19	8,092.19		
<b>31 EARTHWORK</b>							
	Erosion Control & Maintenance	1	LS	15,193.95	15,193.95		
	Asphalt Removal	870	SY	18.00	15,660.00		
	Asphalt Millings Removal	108	SY	11.19	1,208.52		
	Concrete Removal	143	SY	18.79	2,686.97		
	SDDOT Base Course below New Asphalt Patch	415	TN	46.36	19,239.40		
	Existing Gravel: Removed, Salvaged, & Reinstalled in gravel areas	437	TN	38.79	16,951.23		
	Base Course at Removed Concrete Paving areas	63	TN	46.36	2,920.68		
	Boring for Water line (30LF - Includes 8" Certa-Lok pipe)	1	LS	60,604.74	60,604.74		
	Trench Waste Haul (assume 1 mi)	250	CY	22.79	5,697.50		
<b>32 EXTERIOR IMPROVEMENTS</b>							
	AC Class E Type 1 Patch	357	TN	126.97	45,328.29		
	6" Steel Bollards	10	EA	1,967.46	19,674.60		
<b>33 UTILITIES</b>							
	Abandon Water Main/Service (Industrial water @ existing meter pit west of Hoist; Existing Potable main/service south of Mill/Summit; Postable in Steam Tunnel near Hoist; Potable south of Ross Dry; Any potable in Ramp getting abandoned)	1	LS	10,805.30	10,805.30		
	Remove existing 4" steel pipe in tunnel	1	LS	4,026.31	4,026.31		
	Remove existing fire hydrant & auxillary valve	2	EA	1,210.47	2,420.94		
	Reconnect 1" Water in Tunnel to New 8" Potable Water	1	LS	4,026.31	4,026.31		
	8" PVC AWWA C900 Water (Potable) (Shared trench) <b>(Water Alignment 1, station 2+47 to 9+52)</b>	708	LF	124.36	88,046.88		
	6" PVC AWWA C900 Water (Potable) (non-shared trench) <b>(Ross Hoist stub and fire hydrants leads)</b>	175	LF	134.88	23,604.00		
	8" PVC AWWA C900 Water (Potable) (non-shared trench) <b>(Water Alignment 2, Station 0+00 to 5+35; Water Alignment 3, Station 0+00 to 8+52; Water Alignment 4, 0+00 to 3+12)</b>	1681	LF	140.75	236,600.75		
	6" PVC AWWA C900 Water (Industrial) (shared trench) <b>(Water Alignment 1, 2+47 to 9+52)</b>	705	LF	119.63	84,339.15		
	8" Galvanized Steel Water (Potable) in Tunnel	160	LF	506.17	80,987.20		
	6" Galvanized Steel Water (Industrial) in Tunnel	70	LF	487.11	34,097.70		
	8"x8"x8" Grooved Tee (Potable) in Tunnel	2	EA	2,533.19	5,066.38		
	6"x6"x6" Grooved Tee (Industrial) in Tunnel	1	EA	2,276.66	2,276.66		
DIV.	DESCRIPTION	QUAN	UNITS	UNIT COST	X-TEND	SUB-TOTAL	
	4" Gate Valve (Potable) in Tunnel	1	EA	3,965.46	3,965.46		



# Company Awards & Recognitions

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## 2020

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### **2020 Construction Industry Center Craftsmanship Awards**

General Trades: KAJV Pre Excavation Painting - Lead, SD

### **2020 Construction Industry Center Craftsmanship Awards**

Division 2: Concrete and Utility Work- Jackson Boulevard Phase 1 Improvements - Spearfish, SD

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## 2019

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### **2019 Voted Best Cafe Builder in South Dakota**

Voted best cafe builder in South Dakota by General Construction Magazine

### **2019 Voted 50 Best Places to Work**

Voted 50 best places to work by Prairie Business out of South Dakota, North Dakota, and Minnesota

### **2019 Under 40 in Construction Equipment Awards**

RC Scull & Evan Waltermann

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## 2018

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### **2018 AGC Build South Dakota Award - Category II**

For Outstanding Highway-Heavy-Utility Construction

E. Idaho, E. Nevada, Ivy Street and Robbinsdale Park Reconstruction - Rapid City, SD

### **2018 AGC Build South Dakota Award - Category I**

For Outstanding Highway-Heavy-Utility Construction

Meadowbrook Elementary School Phase 1A Drainage Improvements - Rapid City, SD

### **2018 Construction Industry Center Craftsmanship Awards**

Division 13: Special Construction - City of Summerset Wastewater Treatment Plant - Summerset, SD

### **2018 Construction Industry Center Craftsmanship Awards**

Division 3: Concrete- Meadowbrook Elementary School Drainage Improvements Phase 1A - Rapid City, SD

### **2018 Construction Industry Center Craftsmanship Awards**

Division 2: Sitework and Utilities - E. Idaho, Ivy & Nevada Street Reconstruction and Robbinsdale Park Reconstruction - Rapid City, SD

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## 2017

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### **2017 AGC Build South Dakota Award - Category I**

For Outstanding Highway-Heavy-Utility Construction

Spearfish Woodstave Penstock Replacement - Spearfish, SD

### **2017 Construction Industry Center Craftsmanship Awards**

Division 3: Concrete - GCC Kiln 6- Upgrade Detailed Elevated Concrete Structure - Rapid City, SD

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## 2016

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### **2016 Interior Finish Carpentry**

Orchard Meadows Common Cents - Rapid City, SD

### **2016 Retaining Walls Construction**

84 Van Buren Street- Deadwood, SD

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## 2015

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### **2015 Demolition/Dirtwork Construction**

JC Penney Floor Slab Replacement - Rapid City, SD

**EXHIBIT E  
TO GENERAL CONDITIONS  
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  
TO GENERAL CONDITIONS  
FORMS OF PAYMENT BOND  
AND PERFORMANCE BOND**

**EXHIBIT F  
TO GENERAL CONDITIONS**

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

**INSTALLATION OF POTABLE & INDUSTRIAL WATER LINES AT ROSS  
COMPLEX**

**Contract #2020-10**

**PAYMENT AND PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, THAT WE

R.C.S. Construction, Inc.

(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: Installation of Potable & Industrial Water Lines at  
Ross Complex  
PROJECT LOCATION: Sanford Underground Research Facility at Homestake  
Lead, South Dakota

Contract #:2020-10

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.

PROVIDED, FURTHER, that this Bond shall be deemed amended, automatically and immediately, without formal and separate amendment hereto, upon amendment to the Agreement for Construction not increasing the Contract Sum more than twenty (20) percent, so as to bind the Principal and the Surety to the Bond as so amended. Anything elsewhere in this Bond to the contrary notwithstanding, the amount payable under this Bond shall include all applicable sales, use, contractors excise, and other taxes imposed by the State of South Dakota or any local governmental entity. The amount payable under this Bond shall be deemed automatically amended and increased to the extent necessary to pay any such taxes not included in the Contract Sum.

PROVIDED, FURTHER, that any lawsuit arising out of related to this Bond must be brought in a court of the South Dakota Unified Judicial System.

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**

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 \_\_\_\_\_