

TEMPORARY CONSTRUCTION EASEMENT

THIS AGREEMENT FOR EASEMENT (the “**Agreement**”) is entered into effective the 14 day of October, 2016, by and between the **SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY**, (“**Grantor**”), a body corporate and body politic of the State of South Dakota, of 630 East Summit Street, Lead, South Dakota 57754, and the **UNITED STATES OF AMERICA**, (“**Grantee**”), acting by and through the U.S. Department of Energy, under authority and by virtue of the Atomic Energy Act of 1954, Public Law 83-703, and the Department of Energy Organization Act, Public Law 95-91, as amended. Grantor and Grantee sometimes are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Grantor granted Grantee a Land Lease on May 1, 2016 (Lease No. 8.02.19) to construct and operate a facility to house sensitive scientific equipment (the Project).

B. Grantee is requesting a Temporary Easement (as hereinafter defined) from Grantor for the purposes of the Project (as hereinafter defined).

C. Grantor is willing to grant Grantee such Easements on Grantor’s property (as hereinafter defined) on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties agree as follows:

1. **Grant of Easements:** Subject to the terms and conditions hereof, Grantor hereby grants to Grantee certain Easements as are more fully described in Exhibit A attached hereto for the purposes of the Project.

2. **The Project:** The term “Project,” as used herein, means the construction and operation of a facility owned by the Grantee and designed to house scientific equipment for the purpose of fostering and facilitating scientific and technological investigation, experimentation, and development.

3. **Purpose:** The purpose of this construction easement is to grant access to complete activities necessary for site preparation, material, equipment and facility construction and installation, and future experimental operations associated with the LBNF/DUNE Project, and for both parties to continue collaborative efforts which enable the objectives and schedule of the Project to be met by agreeing upon mutual terms.

4. **Term of Easements:** The Easements granted herein shall be effective September 1, 2016 and expire upon completion of installation of the equipment for Deep Underground Neutrino Experiment; provided that in any event this Agreement shall terminate and the easements granted herein shall expire on September 1, 2081.

5. **Easement Conditions:**

A. **General Conditions.** Grantee will manage and pay for the design, construction, and maintenance of any new installations or modifications of or within the Easements to facilitate the uses to be undertaken by Grantee. Grantee shall use reputable design professionals to provide designs for such installations, which design shall be subject to Grantor's review and approval which shall not be unreasonably withheld or delayed.

B. **Non-Exclusive.** All the Easements granted herein are non-exclusive, and Grantor reserves the right to enter the Easements, at its sole risk. Grantor shall not unreasonably interfere with the Grantee's use under this Easement. Grantor and Grantee shall schedule and coordinate all activities within the easement space to minimize impact of Grantee's use.

C. **Hazardous Substances.** The Grantor represents and warrants to Grantee that Grantor has no knowledge of any substance, chemical or waste on or within the Easement Area that is identified as hazardous, toxic or dangerous (collectively, "Hazardous Substance") in any applicable federal, state or local law or regulation. Grantee will not introduce or use any Hazardous Substance on or within the Easement Area in violation of any applicable law, unlawfully pollute the air, ground, or water, or create a public nuisance.

6. **Health and Safety Plan:** Prior to Grantee commencing any work or activities on Grantor's real property, Grantee will develop a site-specific health and safety plan, to be approved by Grantor. The health and safety plan will include all of Grantor's safety, reporting and emergency protocols. Grantee will comply with reasonable instructions from Grantor regarding health and safety matters. It is the responsibility of Grantee to contact One Call to ensure all utilities are located prior to any excavation or investigative work on the surface.

7. **Acknowledgment of Risk and Waiver:** Grantee shall comply with the risk, release and waiver documentation as required by Land Lease No. 8.02.19, General Lease Provisions No. 7 and shall require its contractors and subcontractors to comply with this Paragraph 7.

8. **Insurance:** Grantee shall maintain and cause its contractors to maintain insurance as required by Land Lease No. 8.02.19, General Lease Provisions No. 8.

9. **Restoration:** Grantee shall have the unilateral right to abandon any or all materials, supplies, tools, equipment, and other property used on the Grantor's property at the conclusion of the granted access period with no further obligations to the Grantor. Such right to abandon shall not include the abandonment of any hazardous, toxic or dangerous substance, chemical or waste in violation of any applicable federal or state law or regulation.

10. Notices: All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses referenced below. Any such notices shall be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such courier, (b) sent by telefax, in which case notice shall be deemed delivered upon transmission of such notice, or (c) sent by personal delivery, in which case notice shall be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Either party, by notifying the other party hereto in the manner provided in this paragraph, may designate a different address for receipt of subsequent notices. Either party may designate a Local Representative by providing notice in the manner provided in this paragraph.

If to Grantor: South Dakota Science and Technology Authority
 Attn: Laboratory Director
 630 E. Summit
 Lead, SD 57754
 Telefax:
 E-Mail:

If to the Grantee: Michael Weis
 U.S. Department of Energy
 DOE/FSO MS118
 Kirk Road & Pine Street
 Batavia, IL 60510
 Telefax: 630/840-____
 E-Mail: michael.weis@science.doe.gov

11. Time of Essence: Time is of the essence of this Agreement.

12. Compliance With All Laws: In performing work under this Agreement, Grantee, its contractors and subcontractors, shall comply with all applicable Federal, State, and local laws, rules and regulations.

13. Neutral Construction: This Agreement and the wording contained herein accords with the negotiations of the Parties. Accordingly, no provision hereof shall be construed against one Party or in favor of another Party merely by reason of draftsmanship.

14. Interpretative Matters: References to Sections and Exhibits in this Agreement are to Sections of this Agreement and to the Exhibits attached hereto. Words in the singular or plural include the singular and plural and pronouns stated in either the masculine, the feminine or neuter gender shall include the masculine, feminine and neuter. When not expressly stated, the word "including" means "including but not limited to."

15. Assignment: This Agreement and the obligations, liabilities, rights and benefits hereunder, may not be assigned by either Party without the express written consent of the other Party.

16. Amendments: This Agreement may only be amended, modified or supplemented by a written instrument signed by all the Parties expressly stating that such instrument is intended to amend, modify or supplement this Agreement.

17. Governing Law, Jurisdiction and Venue, and Service of Process: This Agreement shall be construed under and governed by the laws of the State of South Dakota, without the application of the conflicts of law principles thereof, and any applicable federal law. Any lawsuit arising out of or related to this Agreement shall be brought in the federal court in the State of South Dakota.

18. Severability: If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. A provision of similar economic effect shall be substituted for any invalid, illegal or unenforceable provision.

19. Covenant against Contingent Fees:

(a) The Grantor warrants that no person or agency has been employed or retained to solicit or obtain this Easement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this Easement without liability or, in its discretion, to deduct from the Lease price or consideration, or otherwise recover the full amount of the contingent fee.

(b) *Bona fide agency*, as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Grantor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

1) *Bona fide employee*, as used in this clause, means a person, employed by a Grantor and subject to the Grantor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

2) *Contingent fee*, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

3) *Improper influence*, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

20. Officials not to Benefit: No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Easement or to any benefit that may

arise therefrom, but this provision shall not be construed to extend to this Easement if made with a corporation for its general benefit.

21. Counterparts: This Agreement may be signed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. The Parties intend that fax signatures constitute original signatures and that a faxed agreement containing the signatures (original or faxed) of all the Parties is binding on the Parties.

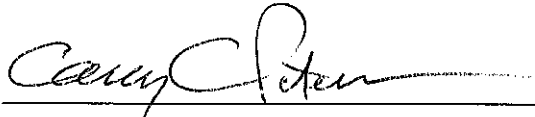
IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

[SIGNATURE PAGE FOLLOWS]

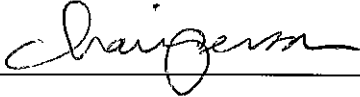
IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names as of the date first above written.

GRANTOR
SOUTH DAKOTA SCIENCE AND
TECHNOLOGY AUTHORITY

GRANTEE
UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

By: 

By:  Michael Weis

Title: 

Title: Fermi Site Office Manager

**SUPPLEMENTAL AGREEMENT NO. 1
TEMPORARY CONSTRUCTION EASEMENT
SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY (SDSTA)**

This Supplemental Agreement No. 1 is entered into for the revision of the Temporary Construction Easement (TCE) dated October 14, 2016 between the UNITED STATES OF AMERICA (hereinafter referred to as the "Grantee,") acting by and through the U. S. DEPARTMENT OF ENERGY (hereinafter referred to as "DOE"), under authority and by virtue of the Atomic Energy Act of 1954, Public Law 83-703, and the Department of Energy Organization Act, Public Law 95-91, as amended and the South Dakota Science and Technology Authority (SDSTA) (hereinafter referred to as the "Grantor"). This Supplemental Agreement shall be effective upon the date of signature of the second signatory.

PURPOSE: The purpose of Supplemental Agreement No. 1 is to amend the easement to include the areas identified in Exhibit A, attached hereto and made a part hereof.

The above referenced Temporary Construction Easement is modified in the following respects:


1. Increase the area covered by the TCE with the addition of drawings 15-1-6 SU-PDR-A-100, 15-1-6 PER-B-T-101, On-Site Parking and Staging Areas – Ross, Oro Hondo Fan, 15-1-6 PER-C-233, 15-1-6 PER-C-231.

Except as herein modified, all terms and conditions remain unchanged.

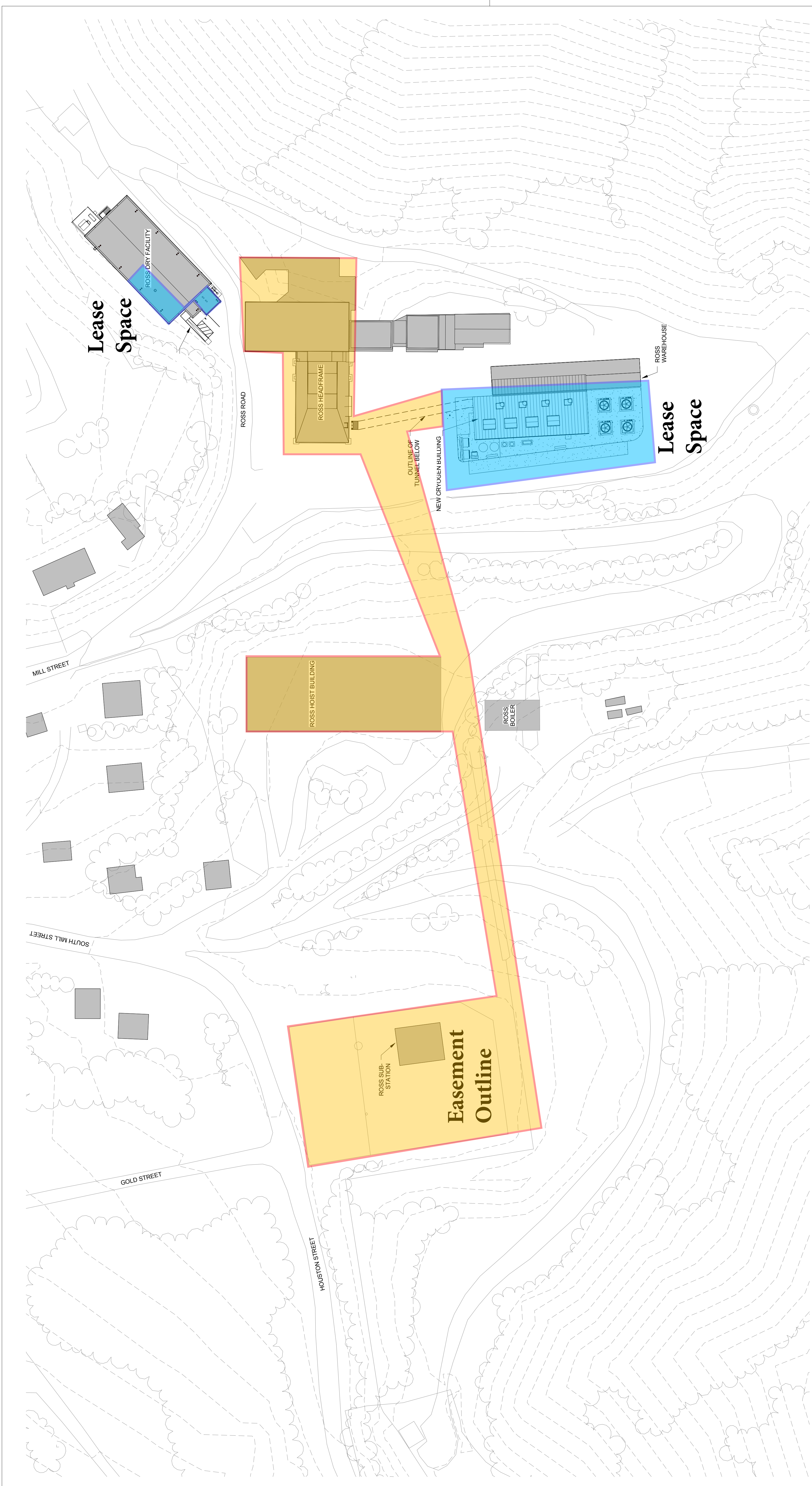
IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement No. 1 to be signed on their behalf by their duly authorized representative.

GRANTOR
SOUTH DAKOTA SCIENCE AND
TECHNOLOGY AUTHORITY

GRANTEE
UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

By: 
Casey C. Peterson
Title: Board Chairperson
Date: June 28, 2017

By: 
Michael Weis
Title: Fermi Site Office Manager
Date: 7/19/2017



SITE PLAN
SCALE: 1" = 50'-0"

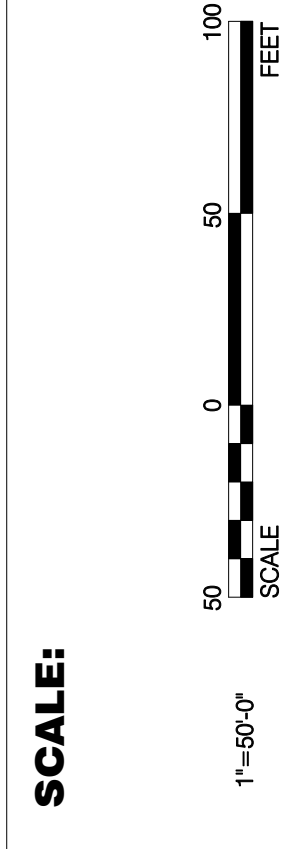
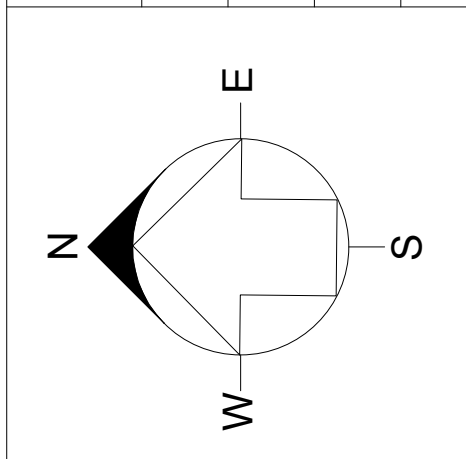
REV.	DATE	DESCRIPTION	REVISIONS
3	08/26/15	100% PDR SUBMISSION	
2	07/08/15	75% PDR SUBMISSION	
1	04/22/15	30% PDR REVISED SUBMISSION	

ARUP
 Arup USA Inc
 77 Water Street, New York NY 10005, T 212 896-3000
 www.arup.com

TSP
 TSP Inc
 610 Avenue C, S.
 Dept. C-1, 50 57th St
 Phone: (609) 443-8102
 Fax: (609) 443-8103
 www.tspinc.com

RESPEC
 CONSULTING & SERVICES

DKa
 Designated
 Maine Architecture
 License No. 100000000
 (08/19/2001)



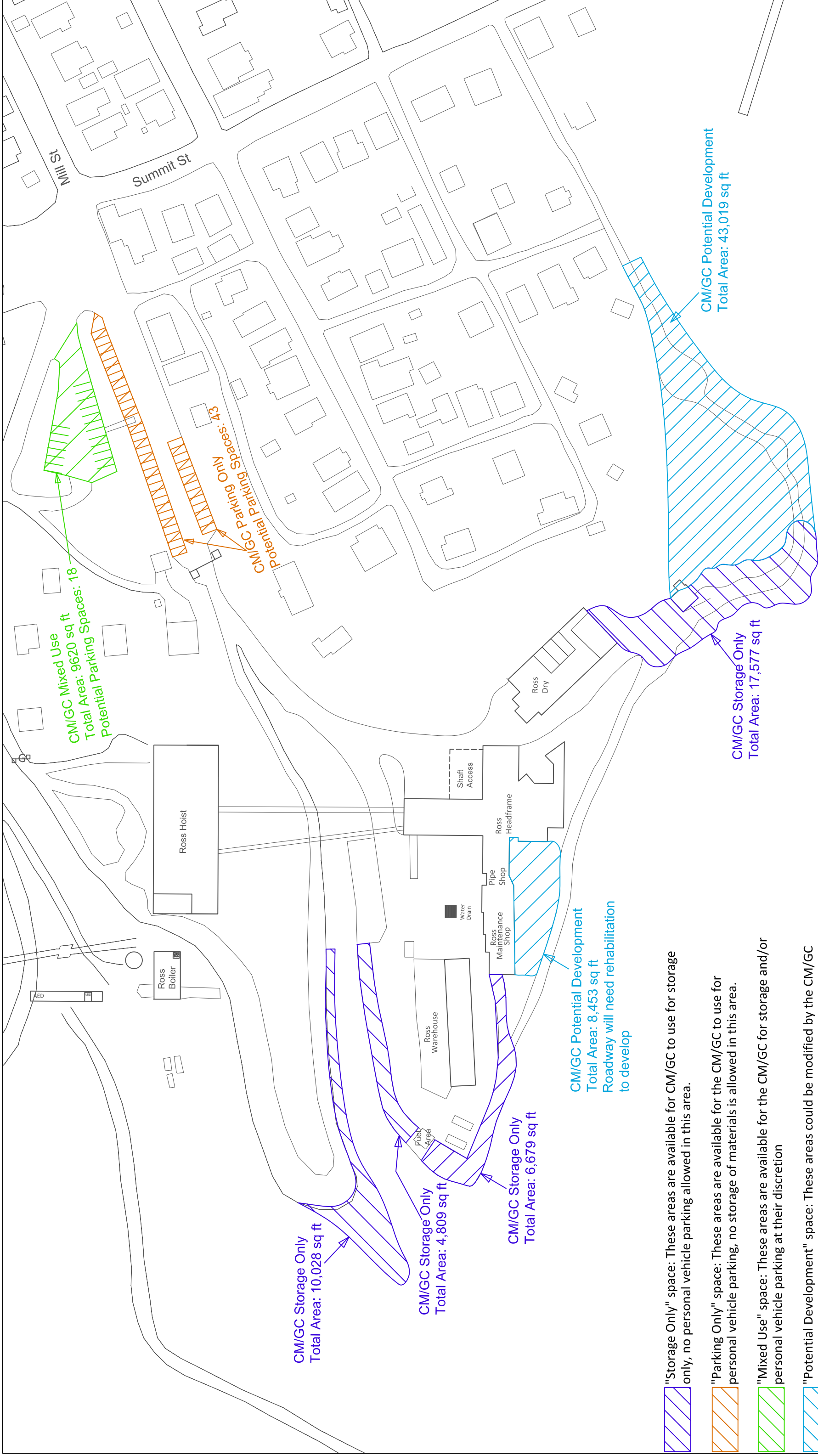
DESIGNED	SC	DKa
DRAWN	SC	DKa
CHECKED	SD	DKa

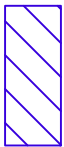



Fermilab Facilities Engineering
 Services Section
 Managed by Fermilab Research Alliance for the U.S. Department of Energy, Office of Science

LBNF - CF - Far Detector - BSI
SURFACE
ARCHITECTURAL
SITE PLAN

DRAWING NO. **15-1-6** **SU-PDR-A-100** REV. **3**

9/19/2015



-  "Storage Only" space: These areas are available for CM/GC to use for storage only, no personal vehicle parking allowed in this area.
-  "Parking Only" space: These areas are available for the CM/GC to use for personal vehicle parking, no storage of materials is allowed in this area.
-  "Mixed Use" space: These areas are available for the CM/GC for storage and/or personal vehicle parking at their discretion
-  "Potential Development" space: These areas could be modified by the CM/GC at the CM/GC's discretion and expense to provide additional "Storage Only" space

All space outside of these hatched areas is used by the SDSTA and should not be assumed to be available for use by the CM/GC. If the space identified on these sheets is insufficient, the CM/GC is responsible for procuring additional offsite space and managing transportation from this offsite space.

CM/GC Mixed Use
Total Area: 9620 sq ft
Potential Parking Spaces: 18

CM/GC Parking Only
Potential Parking Spaces: 43

CM/GC Storage Only
Total Area: 10,028 sq ft

CM/GC Storage Only
Total Area: 4,809 sq ft

CM/GC Storage Only
Total Area: 6,679 sq ft

CM/GC Potential Development
Total Area: 8,453 sq ft
Roadway will need rehabilitation to develop

CM/GC Storage Only
Total Area: 17,577 sq ft

CM/GC Potential Development
Total Area: 43,019 sq ft



On-Site Parking and Staging Areas - Ross

630 E. SUMMIT STREET
LEAD, SD 57754

NOT TO SCALE
May 26, 2016

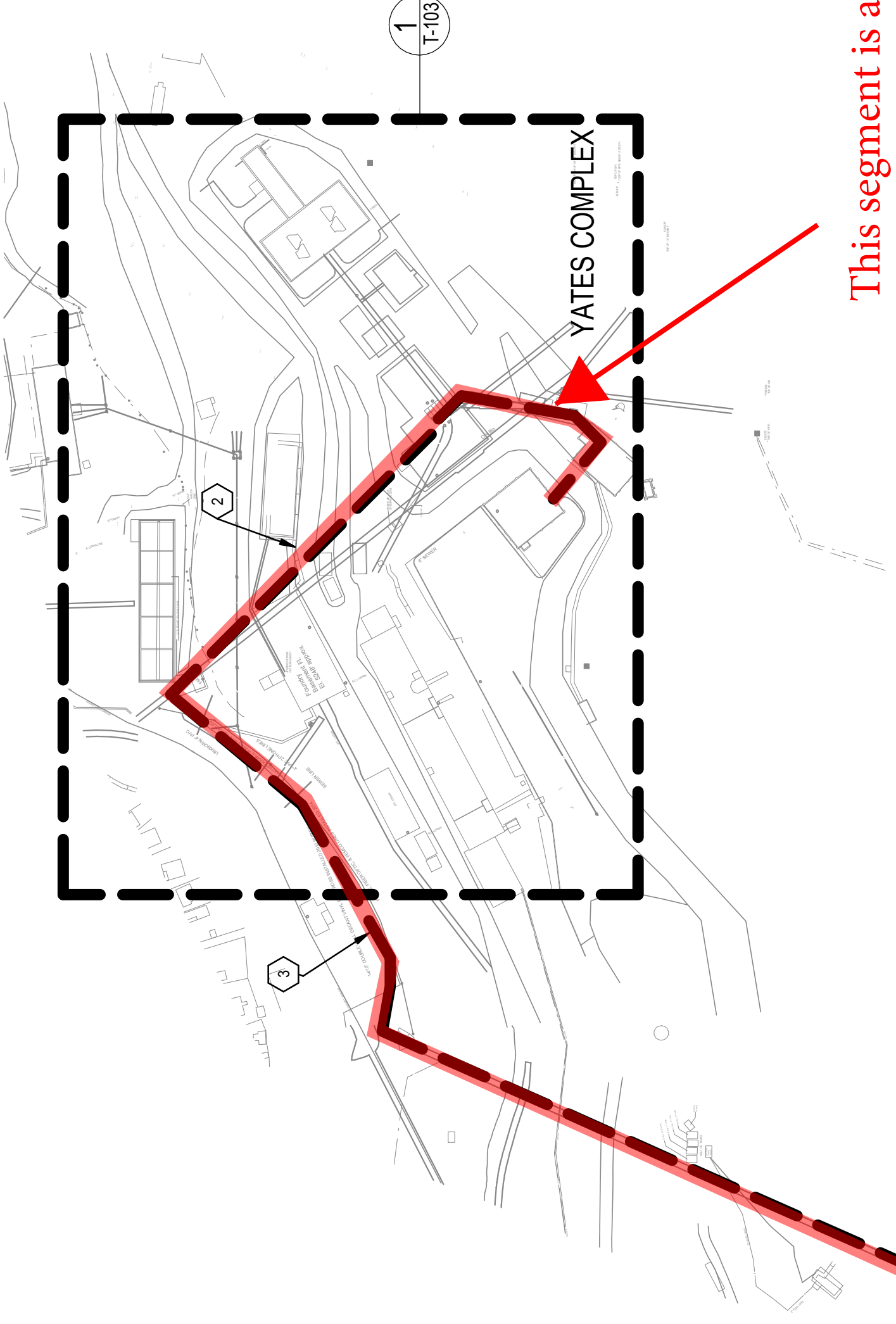
The SDSTA reserves the right to require the CM/GC to restore any of these areas to existing conditions or retain the modified conditions at their discretion.

GENERAL NOTES: SITE PLAN

A. SEE PER-B-T-302 FOR CABLESTRAND COUNT DETAILS.
 B. SEE ENLARGED SITE PLANS ON PER-B-T-102, PER-B-T-103.
 C. SEE PER-B-T-301 FOR RACEWAY SIZES AND QUANTITIES.

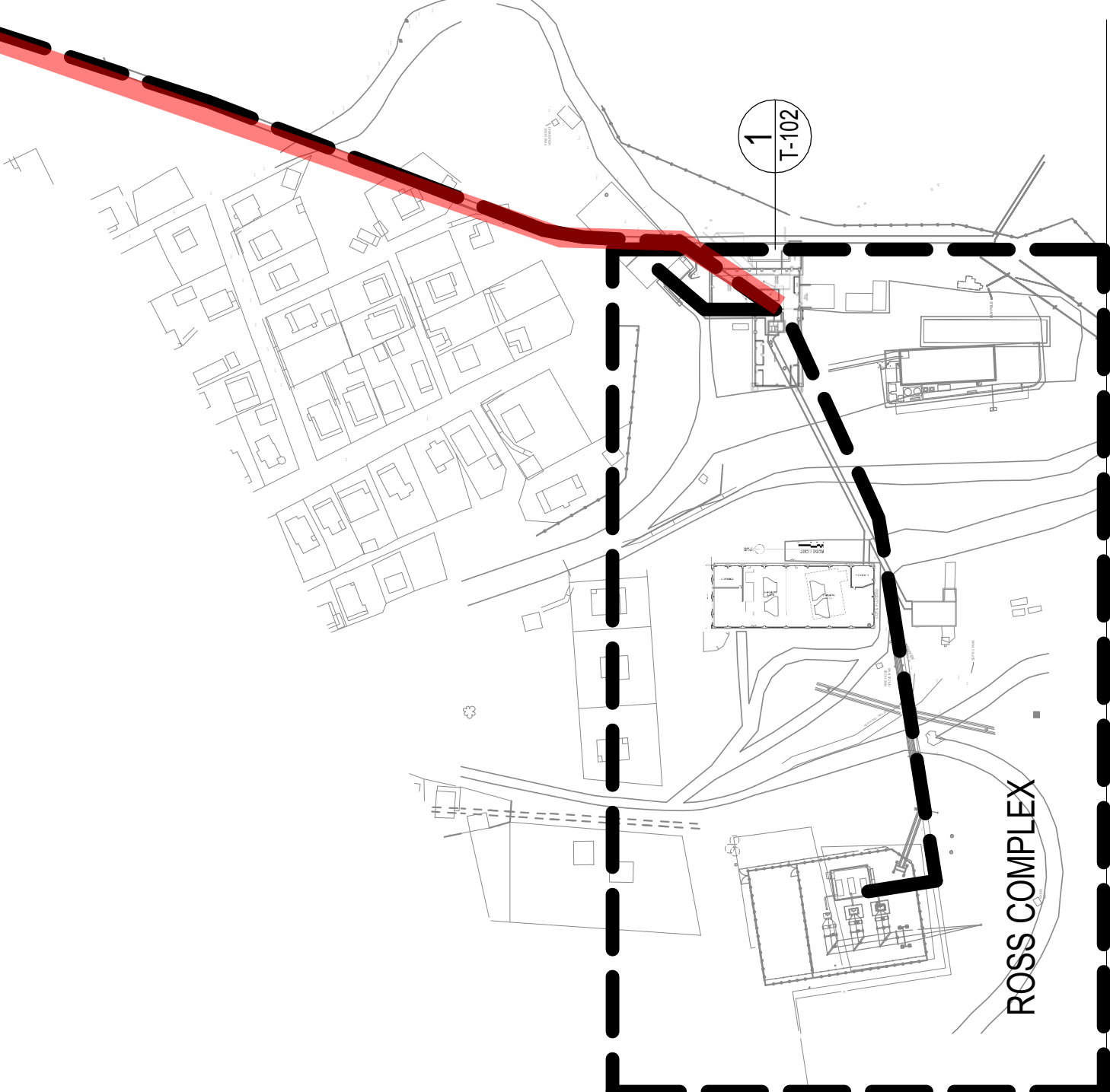
KEY NOTES: SITE PLAN

1. APPROXIMATE ROUTE THROUGH ROSS TRAMWAY, APPROXIMATELY 125 FEET BELOW SURFACE.
 2. APPROXIMATE ROUTE IN YATES TRAMWAY TO YATES SHAFT.
 3. THREE EXISTING 4" CONDUITS ARE BURIED BETWEEN THE ROSS TRAMWAY AND THE YATES TRAMWAY.



This segment is at the Yates Ramp (~30' below grade) and connects through the Yates E&O building to the Yates Administration Building

The red area highlighted represents an easement on the tramway level, Approximately 162 feet below the top of the Ross Shaft. Details for the two ends on the following drawings.



REV.	DATE	DESCRIPTION
5	12/23/16	PRE-EXCAVATION 100% FINAL DESIGN SUBMISSION
4	11/03/16	PRE-EXCAVATION 90% FINAL DESIGN REV. A SUBMISSION
3	10/13/16	PRE-EXCAVATION 90% FINAL DESIGN SUBMISSION
2	07/14/16	PRE-EXCAVATION 60% FINAL DESIGN SUBMISSION
1	03/22/16	PRE-EXCAVATION 30% FINAL DESIGN SUBMISSION

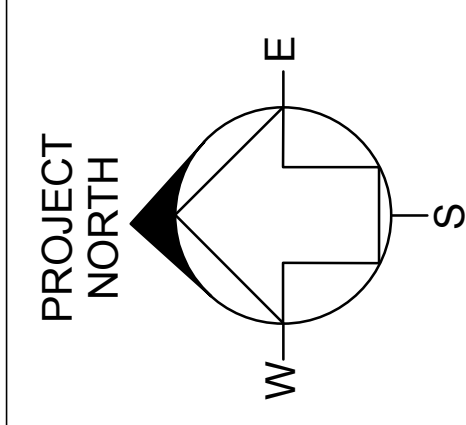
ARUP
 Arup USA, Inc.
 77 Water Street, New York, NY 10005, T 212 896-3000
 www.arup.com

TSP
 TSP, Inc.
 600 Avenue C St.
 Rego, NY 12157
 phone: (803) 344-4400
 www.tbattsp.com

POWER ENGINEERS

stk consulting

FILEV



SCALE:
 1"=200'-0"
 SCALE
 0 200 400 FEET

Fermilab
 Long-Baseline Neutrino Facility

DESIGNED	DLB	TSP
DRAWN	KAO	TSP
CHECKED	DLB	TSP

LBNF - FSCF - BSI
PRE-EXCAVATION PACKAGE
CYBERINFRASTRUCTURE
OVERALL SITE PLAN

DRAWING NO. **15-1-6** REV. **5**
PER-B-T-101

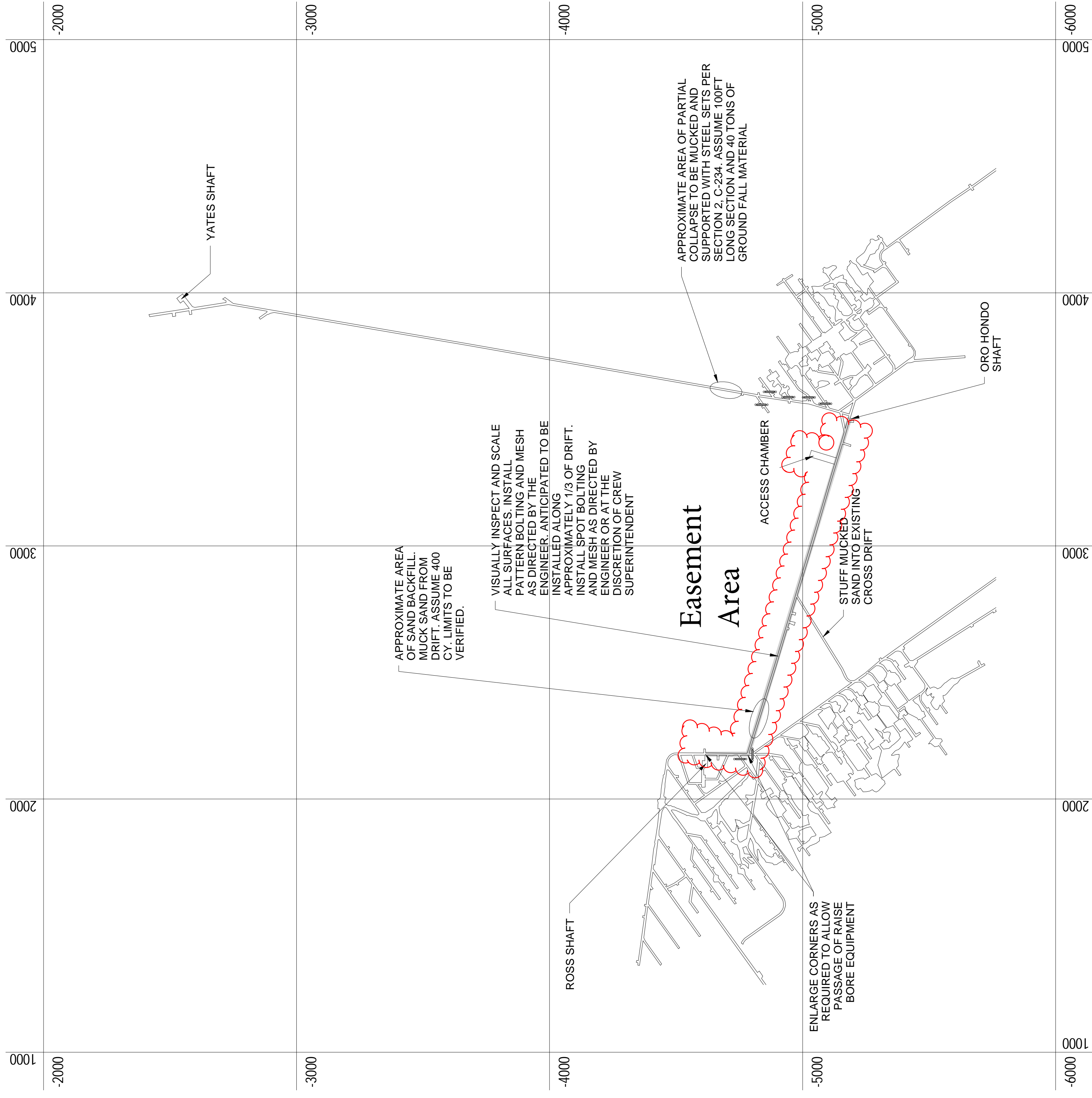
Oro Hondo Fan

The area outlined in red in the graphic below represents the easement space for work to rebuild the existing centrifugal fan at the top of the Oro Hondo Shaft.

The Oro Hondo Substation and Ross Campus are included in this graphic for reference only



- NOTES:**
 1. FOR GENERAL NOTES AND ABBREVIATIONS, REFER TO DRAWINGS C-001 AND C-002
 2. FOR COST ESTIMATE, ASSUME 5 SHIFTS PER VENTILATION CONTROL FOR CREW OF 3 TO INSTALL.

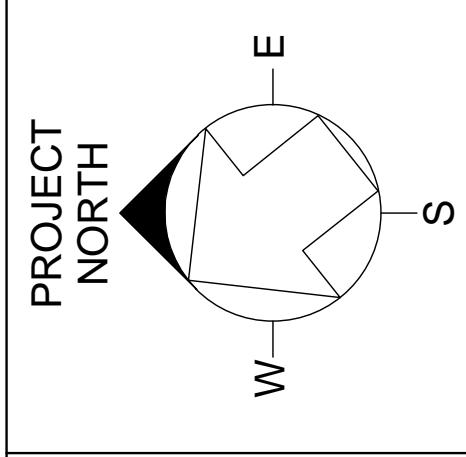


REV.	DATE	DESCRIPTION
1	03/22/16	PRE-EXCAVATION 30% FINAL DESIGN SUBMISSION

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 Arup USA Inc
 77 Water Street, New York NY 10005, T 212 896-3000
 www.arup.com

McMILLLEN JACOBS ASSOCIATES

srk consulting



SCALE:
 1"=500'-0"

500 0 500 1000 FEET

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 Managed by Fermilab Research Alliance for the U.S. Department of Energy, Office of Science

DESIGNED	AG	ARUP
DRAWN	ES	ARUP
CHECKED	JH	ARUP

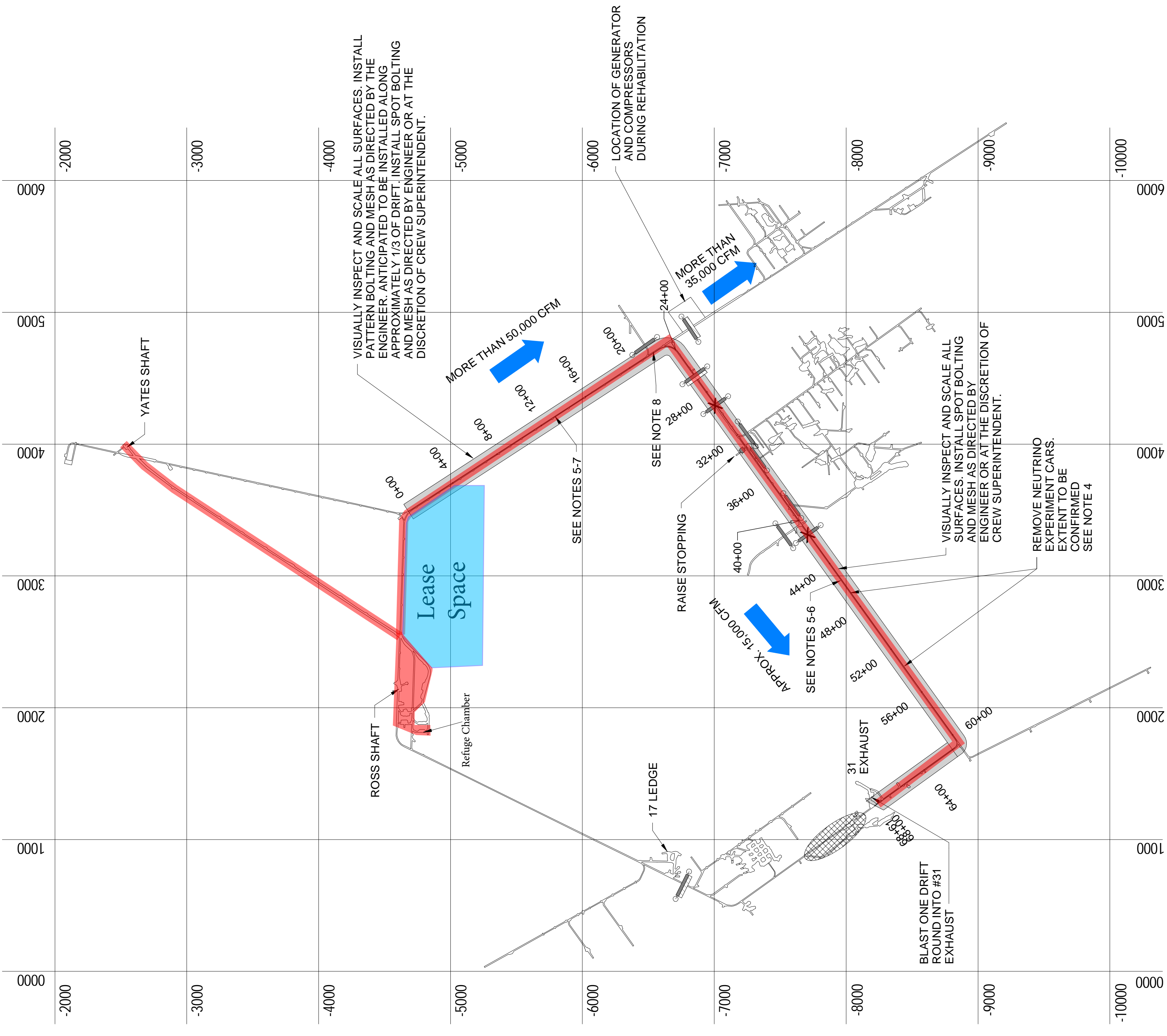
LBNF - CF - Far Detector - Excavation
 PRE EXCAVATION PACKAGE
 3650 LEVEL
 VENTILATION REHABILITATION WORK

DRAWING NO. **15-1-6** REV. **1**
PER-C-233

- NOTES:**
- FOR GENERAL NOTES AND ABBREVIATIONS, REFER TO DRAWINGS C-001 AND C-002
 - FOR COST ESTIMATE, ASSUME 5 SHIFTS FOR CREW OF 3 TO REMOVE EXISTING AIR DOORS
 - FOR COST ESTIMATE, ASSUME 3 SHIFTS PER VENTILATION CONTROL FOR CREW OF 3 TO INSTALL
 - FOR COST ESTIMATE, FOR NEUTRINO EXPERIMENT CAR REMOVAL, ASSUME 6 CARS, 15 SHIFTS FOR CREW OF 3 TO CUT, TRANSPORT, HOIST TO SURFACE.
 - ASSUME 100% OF TRACK SECTIONS TO BE REPLACED BETWEEN #4 WINZE DRIFT AND 31 EXHAUST. ASSUME 10% OF TRACK SECTIONS TO BE REPLACED BETWEEN #4 WINZE AND JUNCTION WITH CROSSDRIFT TO 31 EXHAUST.
 - REMOVE EXISTING UTILITIES, CUT UP TRANSPORT, HOIST TO SURFACE. ASSUME 1x8" PIPE, 2x6" PIPE, 1x3" CABLE, 2x1" CABLE SUSPENDED FROM ROOF IN #4 WINZE DRIFT, ASSUME 2x6" PIPE, 2x3" CABLE, 4x1" CABLE SUSPENDED FROM ROOF IN CROSS DRIFT TO 31 EXHAUST.
 - REMOVE EXISTING SURFACE PROTECTION (MESH, CHAINLINK) IN #4 WINZE DRIFT. REPLACE WITH GALVANIZED WELDED WIRE MESH, #6 GAUGE WITH 4" OPENINGS.
 - BACKFILL ANNULAR SPACE BETWEEN STEEL SETS AND ROCK SURFACE BETWEEN STA. 21+80 AND STA. 22+90 WITH CONCRETE.

Easement Areas

Note that the area defined as 0+00 through 68+61 is the "Ventilation Rehab" project

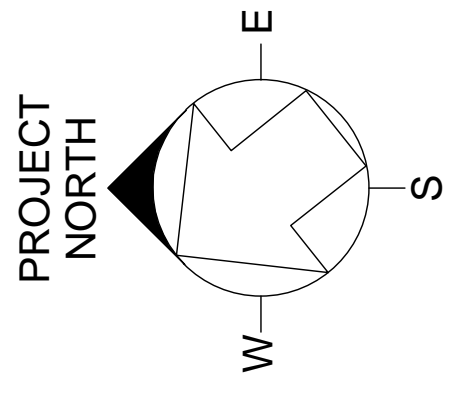


LEGEND

- COLLAPSED AREA
- EXISTING AIR DOOR TO BE REMOVED (SEE NOTE 2)
- BULKHEAD (SEE NOTE 3)
- REGULATOR DOOR (SEE NOTE 3)
- RAISE STOP (SEE NOTE 3)
- AREA TO BOLT AND REFURBISH TRACK

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srk consulting



Fermilab Facilities Engineering Services Section
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DESIGNED	AG	ARUP
DRAWN	ES	ARUP
CHECKED	JH	ARUP

LBNF - CF - Far Detector - Excavation
PRE EXCAVATION PACKAGE
4850 LEVEL
VENTILATION REHABILITATION WORK

DRAWING NO. **15-1-6** PER-C-231 REV. **1**

REV.	DATE	DESCRIPTION	REVISIONS
1	03/22/16	PRE-EXCAVATION 30% FINAL DESIGN SUBMISSION	