

Date Issued:
July 21, 2000

**Deuel County Conservation District
Sediment Removal Project
Clear Lake
Clear Lake, South Dakota**

**Deuel County Conservation District
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7.21.2000

ISSUED FOR BID

SD #4

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GENERAL CONDITIONS

GC-1. SCOPE:

The Deuel County Conservation District will award subject to anticipated future funding at the federal, state, and local levels. The Deuel County Conservation District reserves the right to reject all bids.

The Contractor shall, in good and first class workmanlike manner, and at his own cost and expense, furnish all labor, materials, equipment and services necessary to complete, ready for use, all the work as described in the Contract Documents on file with the Owner, all of the work to be done under the direct supervision and to the entire satisfaction of the Owner, and in accordance with the laws of the State of South Dakota.

GC-2. CONTRACT DOCUMENTS:

It is to be understood and agreed that the work shall be done fully in accordance with the Contract which includes: Advertisement for Bids, Instructions to Bidders, Bidders Proposal Form, Bid Bond, Contract or Agreement, Performance and Payment Bond, Contract Administration Forms, General Conditions, Supplemental Special Conditions, Technical Specifications, Detailed Plans, and Addenda, all of which shall be defined as the Contract Documents. Detailed plans and/or specifications that are furnished by the Contractor to clarify or define the Owner's contract must be approved by the Owner. Upon approval, said plans and/or specifications shall be considered a part of this Contract.

GC-3. DEFINITIONS:

That whenever any word or expression defined in this article, or pronoun used in its stead, occurs in these documents, it shall have and is mutually understood to have the meaning herein given:

- (a) "Contract " or "Contract Documents" shall include all of the documents and plans enumerated in Section GC-2
- (b) "Owner" or the words "Party of the First Part" shall mean the project sponsor as defined in the State and/or Federal grant/work-plan associated with this project unless noted otherwise in the special conditions.
- (c) "Engineer" shall mean the project Engineer, or his duly authorized agents, such agents acting separately of both parties to the agreement within the scope of the particular duties entrusted to them.
- (d) "Observer" shall mean the engineering or technical observer duly authorized by the Owner or Engineer limited to the particular duties entrusted to him or them.
- (e) "Contractor" or the words "Party of the Second Part" shall mean the party entering into the Contract for the performance of the work covered by the Contract and his duly authorized agents or legal representatives.
- (f) "Date of Signing the Contract" or words equivalent thereto, shall mean the date upon which this Contract, executed by the Contractor, is signed by the Owner
- (g) "Day" or "Days" unless herein otherwise expressly defined, shall mean a calendar day or days of twenty-four hours each, including Saturdays, Sundays and holidays.
- (h) "Work" shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the project.

- (i) "Working Day" shall mean a calendar day, except as set forth in which weather and other conditions not under the control of the Contractor will permit construction operations or other operations to proceed for the major part of the day with the normal working force engaged in performing the controlling item or items of work which would be in progress at the time.
- (i) "The Plans" shall mean and include all drawings which may have been prepared by the Engineer as a basis for Proposals, all drawings submitted by the successful bidder with his Proposal and by the Contractor to the Owner, if and when approved by the Owner through its Engineer; and all drawings submitted by the Owner to the Contractor during the progress of the work, as provided for herein.
- (j) Whenever in these Contract Documents the words "as ordered", "as directed", "as required", "as permitted", "as allowed", or words or phrases of similar effect and intended meaning are used, it shall be understood that the order, direction, requirements, permission or allowance of the Owner, the Owner through its Engineer, or Engineer is intended.
 - (1) Similarly the words "approve", "equal", "equivalent", "reasonable", "suitable", "acceptable", "properly", "satisfactory", or words of similar effect and intended meaning, unless otherwise particularly specified herein, shall mean approved, equal, equivalent, reasonable, suitable, acceptable, proper or satisfactory in the judgment of the Owner and Engineer.
- (l) "Written notice" shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at, or sent by registered mail to, the last business address of the intended recipient known to him who gives the notice.
- (m) The term "Subcontractor," as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes materials worked to a special design according to the Plans and Specifications of this work, but does not include one who merely furnishes material not so worked.
- (n) "Substantial completion," or "completion" shall mean completion such that the completed work can be operated in the manner and for the purposes intended.

GC-4. CONTRACT DOCUMENTS FOR BIDDING:

Upon the Contractor's request, and receipt of a document-handling fee from the Contractor for each set requested, the Owner will furnish copies of the contract documents for the purpose of bid preparation. A portion of the handling fee will be refunded upon the prompt return of all documents in good condition after the bid opening.

GC-5. SUBHEADINGS AND TITLES:

The titles or subheadings used in this contract and on the contract plans and drawings and in the specifications, are understood to be for convenience of reference only, and shall not be taken or considered as being a part thereof, or as having any bearing on the interpretation thereof. The titles or subheadings shall not be taken as correct or complete segregation of the several units of material and labor. No responsibility, either direct or implied, is assumed by the Owner for omissions or duplications by the Contractor or his subcontractor, due to real or alleged error in arrangement of matter in these Contract Documents.

GC-6. NATURE AND LOCATION OF WORK:

It is understood and agreed that the Contractor has, by careful examination, satisfied himself as to the nature and location of the work, the conformation of the ground, and character of equipment and facilities needed preliminary to and during the execution of the work, the general and local conditions, and all other matters which can in any way affect the work under this contract.

GC-7. CONTRACTOR TO CHECK SPECIFICATIONS AND SCHEDULE:

The Contractor is required to check all specifications, quantities and schedules given to him by the Owner and shall notify the Owner of any discrepancy which he may discover in the course of the work. The Contractor will not be allowed to take advantage of any error or omission in the specifications of contract documents as full instructions will be furnished by the Owner should such error or omission be discovered. The Contractor shall carry out such instructions as if originally specified.

GC-8. NATURE AND INTENT OF CONTRACT DOCUMENTS:

The said specifications, plans and contract are intended to supplement, but not necessarily duplicate each other and together constitute one complete set, so that any work covered in the one and not in the other, shall be executed just as if it had been set forth in both as well as the Contract, in order that the work shall be completed according to the complete design or designs as decided and determined by the Engineer. Should anything be omitted from the specifications, plans and contract which is necessary for a clear understanding of the work, or should it appear various instructions are in conflict, then the Contractor shall secure written instructions from the Owner before proceeding with the construction affected by such so that the work shall be performed and completed according to the true spirit, meaning and intent of the contract and specifications.

- (a) If the Contractor discovers any error or omission in the Contract Drawings or Specifications, or in the work undertaken and performed by him, he shall immediately notify the Owner who shall promptly verify or correct same. The Contractor's notification shall be in writing.
- (b) If, knowing of such error or omission and prior to correction thereof, the Contractor proceeds with any work affected thereby, he shall do so at his own risk, and the work so done shall not be considered as work done under the contract and in performance thereof, unless and until approved and accepted.

GC-9. ESTIMATED QUANTITIES:

The Contractor agrees that the quantities of the Work as stated in the Bid Proposal or indicated on the Plans are only approximate, and that during the progress of the work, the Owner may find it advisable, and shall have the right to omit portions of the work and to increase or decrease the quantities, and that the Owner reserves the right to add to or take from any items as may be deemed necessary or desirable. Under no circumstances or conditions will the Contractor be paid anything on account of anticipated profits upon the work or any portion thereof covered by this contract, which is not actually performed and which has not actually entered into the construction of the work.

GC-10. GENERAL RESPONSIBILITY OF CONTRACTOR:

The Contractor shall furnish all transportation, ways, works, machinery, and plant, and all suitable appliances required for the safe, proper and lawful construction, maintenance and use thereof. He shall cover and protect his work from damage and all injury to the same.

The Contractor shall be solely responsible and answerable for all damages to the Owner and its employees, other contractors, neighboring and adjacent property owners or any private or personal property thereof. due to improper, illegal, or negligent conduct by the Contractor, or subcontractors, employees and other agents of the Contractor, in and about the work, or in the execution of the work covered by this Contract including extra work undertaken therein. The Contractor shall settle claims for alleged damages before the completion and acceptance of the Contract. The Contractor shall indemnify and hold harmless the Owner and its officers and agents from all claims relating to the work.

GC-11. MATERIALS, SERVICES AND FACILITIES:

- (a) It is understood that except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.
- (b) When required by the specifications or when called for by the Owner, the Contractor shall furnish the Owner for approval full information concerning the materials or articles which he contemplates incorporation in the work. Samples of the materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without approval shall be at the risk of subsequent rejection.
- (c) If not otherwise provided, materials or work called for in this Contract shall be furnished and performed in accordance with well known established practices and standards recognized and accepted in the construction and engineering industries.
- (d) Workers shall be qualified for their respective trade. Skilled tradesmen shall perform the various portions of the work requiring special training and experience. Workers shall be faithful, orderly, and willing to carry out the work in accordance with Contract Documents. Workers that do not meet these requirements, in the opinion of the Owner, or those that use threatening or abusive language. shall be permanently discharged from the work.
- (e) Contractor's Title to Materials: No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the work, free from all liens, claims or encumbrances.
- (f) Unless otherwise stipulated in the specifications, all workmanship, equipment, materials, and articles incorporated in the work covered by this Contract shall be new and of the best grade of their respective kinds for the purpose.

GC-12. OR EQUAL CLAUSE:

Whenever a material, article, or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and any materials, articles, or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Engineer, of equal substance and functions. Requests for such approval must be made to the Owner ten (10) days prior to the bid opening. The approval of material or equipment as equal to that specified will be made in writing in the form of an addendum issued by the Owner

to all plan holders of record. The base bid and any alternate shall be based on materials only as specified or approved.

GC-13. PREFERENCE FOR SOUTH DAKOTA PRODUCTS, LABOR AND MATERIALS:

By virtue of statutory authority in SDCL 5-19, as amended, preference will be given to South Dakota products, labor and materials as provided by law.

GC-14. PROTECTION OF WORK AND PROPERTY:

- (a) The Contractor shall maintain continuous, adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall adequately protect adjacent property as provided by law and the Contract Documents.
- (b) He shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority or local conditions.

GC-15. SAFETY REQUIREMENTS:

In order to protect the lives and health of his employees under the contract, the Contractor shall comply with all pertinent provisions of the "Occupational Safety and Health Standards for Construction" issued by the Associated General Contractors of America, Inc., and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

The Contractor will not be allowed separate or additional compensation for costs of equipment, personnel and materials necessary to maintain a healthy, safe, hazard-free work site as such costs shall be considered incidental to the work.

GC-16. BARRICADES AND WARNING SIGNS:

The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work and safety of the public. Highways closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness. Suitable warning signs shall be provided to properly control and direct traffic.

The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the road by traffic, and at all intermediate points where the new work crosses or coincides with an existing road. All barricades, warning signs, lights, temporary signals and other protective devices must conform with the current local utility code.

GC-17. SUNDAY, HOLIDAY AND NIGHT WORK:

No work shall be done between the hours of 7 P.M. and 7 A.M. unless the Contractor first obtains the written permission of the Owner; such permission may be revoked at any time by the Owner if the Contractor fails to maintain at night adequate force and equipment for reasonable prosecution and supervision of the work.

No work shall be done on Sundays and legal holidays, except such work as is necessary for the proper care and protection of work already performed, or in the case of an emergency, and in any case only with the permission of the Owner.

GC-18. TIME OF DELIVERY:

The Contractor agrees that in undertaking to complete the work within the time herein fixed, he has taken into consideration and made allowances for all of the ordinary delays and hindrances incidental to such work whether growing out of delays in securing materials or equipment.

GC-19. PERMITS AND REGULATIONS:

- (a) Permits and licenses of a temporary nature necessary for the prosecution of the work shall be secured and paid for by the Contractor. Permits, licenses and easement for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Owner, unless otherwise specified.
- (b) The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the Contractor observes that the Drawings and Specification are at variance therewith, he shall promptly notify the Owner in writing and any necessary changes shall be adjusted as provided in the Contract for changes in the work. 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, he shall bear all costs arising therefrom.

GC-20. UNEMPLOYMENT COMPENSATION CONTRIBUTIONS IN COMPLIANCE WITH PARAGRAPH 5-18-16 AND 5-18-17, SDCL 1967, AS AMENDED:

- (a) The Contractor to whom the contract is awarded will pay the Employment Security Department of South Dakota all contributions and interest due under the provisions of CH 61-5, SDCL 1967, as amended, on wages paid to individuals employed in performance of said contract.
- (b) The Contractor shall furnish to the Owner a certificate from the Employment Security Department that all contributions and interest due the Employment Security Department in the performance of such contract have been paid. The said certificates shall accompany Contractor's request for final payment.

GC-21. TAX LIABILITY:

The Contractor, Suppliers and Subcontractors shall be responsible for paying sales taxes, use taxes and excise taxes as provided for under South Dakota State law.

GC-22. PATENTS:

- (a) The Contractor shall hold and save the Owner and its agents, officers, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents.
- (b) If the Contractor uses any design, device or materials covered by patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials in any way involved in the work.

- (c) It is further agreed that the Contractor and/or his sureties shall indemnify and save harmless the Owner from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with the work.
- (d) The Contractor shall satisfy, and indemnify the Owner for, all demands that may be made at any time during the prosecution of the work or after the completion of the work for royalties and patent infringement claims for the use of patented or copyrighted design, device, process, or materials in connection with the work. The Contractor shall, at his own expense, defend any and all suits or proceedings that might be instituted at any time for infringement or alleged infringement of any patent(s) involved in the work. Any award of damages resulting from such suit or proceeding shall be paid by the Contractor. Final payment to the Contractor by the Owner will not be made until all such suits or claims are settled.

GC-23. INSURANCE:

The Contractor shall not commence work under this contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner. Each contractor shall maintain for the life of the contract, Workmen's Compensation, Public Liability and Property Damage Insurance, and Automobile and Truck Insurance, as will protect him from all claims which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them and also against any special hazards which may be encountered in the performance of this contract according to the following requirements:

(a) WORKMEN'S COMPENSATION INSURANCE:

The contractor shall maintain such insurance for the life of the contract as will protect himself and the Owner from claims under Workmen's Compensation Acts.

(b) PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:

The contractor shall maintain for the life of the contract Public Liability and Property Damage Insurance with minimum limits of \$500,000 for bodily injuries, including accidental death, to any one person and \$1,000,000 for more than one person in any one accident. The minimum limits for Property Damage Insurance shall be \$500,000 per occurrence.

*****The above may be replaced by a combined single limit of \$1,000,000*****

Property Damage Liability Insurance shall further include coverage for injury to, or destruction of, any property arising out of collapse of, or structural injury to, any building or structure due to:

- (1) Grading of land, excavation, borrowing, filling, backfilling, tunneling, pile driving, cofferdam work or caisson work or
- (2) Moving, shoring, underpinning, razing, or demolition of any building or structure, or removal or rebuilding of any structural support thereof.
- (2) Injury to, or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith below the surface of the ground, if such injury or destruction is caused by, or occurs during the use of mechanical equipment for the purpose of grading of land, paving, excavating or drilling, or,
- (3) Injury to, or destruction of, public or private property at any time resulting therefrom, including paint damage.

- (4) The Property Damage Liability Insurance shall include coverage for injury to, or destruction of, any property arising out of blasting or explosion.
- (3) The Contractor agrees to indemnify and save harmless the Owner for all accidents arising out of the Contractor's operation in connection with this project. Evidence of Contractual Liability is required.

(c) AUTOMOBILE AND TRUCK INSURANCE:

The contractor shall keep and maintain for the life of the contract Automobile and Truck Public Liability, Bodily Injury and Property Damage Insurance, including hired and non-owned auto with minimum limits as follows:

(1) Injury to, or death of, one person	\$300,000
(2) Injury to, or death of, more than one person in a single accident	\$500,000
(3) Property Damage	\$300,000

*****The above may be replaced by a combined single limit of \$1,000,000*****

(d) BUILDERS RISK INSURANCE ON BUILDING, STRUCTURES, EQUIPMENT AND APPLIANCES:

The Contractor shall effect and maintain fire, extended coverage, vandalism, malicious mischief, all risk insurance including theft, in the full amount of his contract, upon any building, structure, equipment and appliance in the process of construction or installation of the work and upon all materials on site and intended for use therein until such time as the work has been finally accepted by the Owner and the Contract completed. Contract amount and statement "All Risk Including Theft" must be entered on the certificate.

(e) CERTIFICATES OF INSURANCE:

- (1) Certificates of the above insurance shall be filed with the Owner and shall be subject to the Owner's approval for adequacy of protection. Each respective contractor shall provide the certificates for the insurance hereinbefore required. The insurer shall state in his certificate that no cancellation of said insurance will be made without at least thirty (30) days prior notice to the Owner in writing.
- (2) The Owner's approval or acceptance of such certificates of insurance shall in no way release or relieve the respective contractor from any responsibility, liability or obligation devolving upon him.
- (3) All insurance policies and certificates shall be issued only by companies authorized to do business in the State of South Dakota. It shall be the contractor's responsibility to keep the respective insurance policies and coverage current and in force for the life of the contract.

GC-24. INDEMNITY:

The Contractor shall indemnify and save harmless the Owner from and against all losses and all claims, demands, payment, suits, actions, recoveries and judgments of every nature and description brought or recovered against him, by reason of any act or omission of the said Contractor, his agents or employees, in the execution of the work or in the guarding of it and this shall include acts or omissions of subcontractors.

The Contractor shall, and is hereby authorized to maintain any part for such insurance, issued in the name of the Owner, as will protect the Owner from his contingent liability under this Contract, and

the Owner's right to enforce against the Contractor any provision of this Section shall be contingent upon the full compliance by the Owner with the terms of applicable insurance policy or policies, a copy of which shall be deposited with the Owner.

GC-25. BIDS:

- (a) Each bid must be accompanied by a certified check, cashier's check or draft, for five percent (5%) of the amount of the bid including all add alternates; such check to be certified or issued by either a State or National Bank and payable to the Owner, as a guaranty that such bidder will enter into a contract with the Owner in accordance with the terms of the letting and bid in case such bidder be awarded the contract. Bid bonds are acceptable as bid security under these specifications. (See next paragraph.)
- (b) Bid Bonds: In lieu of a certified check as a bid guaranty, a bid bond of ten percent (10%) of the total amount of the bid, including all add alternates may be furnished by the Contractor. Such bond to be issued by a surety authorized to do business in the State of South Dakota. Such bond shall be payable to the Owner as guaranty that such bidder will enter into a contract with the Owner in accordance with the terms of such letting and bid in case such bidder be awarded the contract.
- (c) No bidder shall be required, either in the Advertisement for Bids, or otherwise, to leave his certified check or other guaranty or bid bond posted for a period longer than thirty (30) days if his bid is not accepted. Said bid guaranty shall be returned by the Owner to the respective bidder. The certified check or other guaranty of the successful bidder shall be returned to him forthwith upon 1) the Owner's approval of the Contractor's performance and payment bond and proof of insurance, and 2) execution of the agreement.
- (d) Any bid may be withdrawn by letter or by telegraphic communications or in person, before the time specified in the advertisement for the opening of bids. Bids may be modified by mail, telegraphic notice, or facsimile notice received at the place designated in the Advertisement for Bids prior to the time set for the opening of bids. Telegraphic or facsimile modification shall not reveal the bid price, but shall provide the addition or subtraction or the modification so that the final prices or terms will not be known to the Owner until the sealed bid is opened. Any telegraphic or facsimile modification may not be withdrawn after the time set for the opening of bids. Telegraphic modifications must be confirmed in writing by the successful bidder before award of the contract. No bid made shall be changed or altered by telephone. No oral changes, alterations or conditions will be accepted under any circumstance.
- (e) No more than thirty (30) days shall lapse between the opening of the bids and either acceptance of the bid of the lowest responsible bidder or the rejection of all of the bids presented.

GC-26. NONRESIDENT BIDS:

The contract shall be awarded to the lowest responsible bidder. A resident bidder shall be allowed a preference on a contract against the bid of any bidder from any other state which enforces or has a preference for resident bidders. The amount of preference given to the resident bidder shall be equal to the preference in the other state.

GC-27. PERFORMANCE AND PAYMENT BOND:

- (a) The Contractor shall, within ten (10) days after the date of award and before commencing the work, furnish a Performance and Payment Bond satisfactory to the Owner and on the

form provided by the Owner, in an amount not less than the contract price, for the faithful performance of the contract, with the additional obligation that such Contractor shall promptly pay all persons supplying him labor or material in the prosecution of the work provided for in the Contract. (Failure on the part of the bidder to furnish such bond in the time stated shall be cause for consideration by the Owner of awarding the Contract to the second low bidder and the retention of the bid deposit.)

- (b) In case of a partnership contract, each partner must sign the bond.
- (c) The surety bond executed by the Contractor, issued to the Owner, shall be a guarantee (a) for the faithful performance and completion of the work in strict accordance with the Contract Documents; (b) for the payment to the Owner of all sums due or which may become due by the terms of the Contract; as well as by reason of any violation thereof by the Contractor; (c) for the payment of all bills, including the hire, rental or lease of equipment or machinery, and the operators thereof, used on the work, and for all materials, lubricants, oils and gasoline used in or consumed in the construction of such work and for all labor performed in such work whether by the subcontractor or otherwise; (d) the payment of any and all judgments and costs of suits and actions brought against the Owner or officials thereof for any cause whatsoever arising from or on account of any injuries or damages to life or property suffered or sustained by any person, firm or corporation caused by the Contractor or his agents, servants or employees in the construction of said work or in consequence of any negligence, carelessness or misconduct in guarding and protecting the same or any act or omission of said Contractor or his agents, servants or employees; (e) and for the protection of the Owner against all suits and claims for infringements or alleged infringements of patent rights or processes; (f) and for a period of one (1) year from and immediately following the completion of said contract and the acceptance thereof by the Owner, the payment to the Owner of all damages, loss and expenses, which may occur to the Owner by reason of defective materials used, or by reason of defective workmanship done, in the furnishing of materials for and the construction of the said work. This section shall in no way be construed as limiting the obligation under the Performance Bond actually furnished, but may be an addition thereto.
- (d) The Owner shall, upon ten (10) days written notice to the Contractor, delivered by certified mail, return receipt requested, to the Contractor's last known address, notify the surety of the Contractor's failure to comply with the requirements of the Contract and Performance and Payment Bond. The written notice to the Contractor will describe the Owner's opinion in regard to the manner in which the Contractor is failing to comply.

GC-28. AFFIRMATIVE ACTION PLAN:

Contractors, vendors, and suppliers employing fifteen or more persons shall place on file a statement of Affirmative Action that said contractor, vendor, or supplier does not discriminate in its employment practices with regard to race, color, religion, sex or national origin. No award of any contract shall be executed or awarded and approved by the Owner for any service, supply, or commodity unless the successful bidder submits such statement. Above statement may be submitted to the Owner with the contractor's bid, or prior to award of contract.

GC-29. CONTRACTS:

All contracts for the work shall be made and set forth in writing and shall be signed on behalf of the Owner and the Contractor by the proper officials thereof, and with the formalities required by each party's governing statutes. The contract shall be so conditioned that it shall permit progress

payments, but if so, shall provide for retention from the payments of an amount necessary to complete the work until the contract shall be fully executed and the work completed to the satisfaction and acceptance of the Owner or its governing body. See paragraph 5-18-12, SDCL 1967, as amended.

GC-30. COPIES OF CONTRACT:

Not less than four (4) copies (and as many more as may be required) of the bound volumes of the proposal, agreement, payment and performance bond, and insurance certificates shall be prepared by the Owner. Each bound volume shall contain an exact copy of the agreement with original signatures of both parties thereto. At a minimum, the Contractor and the Owner will each have one (1) bound volume. Additional copies shall be filed where, and as may be, required.

GC-31. VERBAL STATEMENTS NOT BINDING:

It is understood and agreed that the written terms and provisions of this agreement shall supersede all prior verbal statements of the Officials, Engineer, or other representatives of the Owner, and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written agreement.

GC-32. SUBLETTING OF CONTRACT:

- (a) The Contractor shall perform with his own organization; work amounting to not less than 50 percent of the original total contract price. Items designated by the Owner in the bid proposal as "specialty items" may be deducted from the original price before computing the amount of work required to be performed by the Contractor with his own organization. Contractor's organization refers to his regular working force and equipment owned by the Contractor or that, which is supplied to the Contractor by an established equipment dealer.
- (b) Portions of the work to be sublet and the name of the respective subcontractor shall be furnished with the bid on the form provided with the bid proposal.
- (c) Subcontractors shall be experienced and equipped for the portion of work being sublet.
- (d) All pertinent provisions of the Contract Documents shall apply to work sublet, assigned, or otherwise disposed of.
- (e) The Contractor agrees that he is fully responsible to the Owner for the acts and omissions of his subcontractor(s), and of persons either directly or indirectly employed by the subcontractor(s), as he is for the acts and omissions of persons directly employed by the Contractor.
- (f) Nothing contained in the Contract Documents shall create any contractual relation or obligation between any subcontractor and the Owner, nor any obligation on the part of the Owner to pay, or to see to the payment of, any sums to any subcontractor.
- (g) No contractor shall write any subcontract at variance with the conditions of the Contract Documents, and the provisions of the Contract Documents shall be incorporated in any subcontract agreement.

GC-33. ASSIGNMENT:

- (a) Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other; nor shall the contractor assign any monies due, or to become due to him hereunder, without the previous written consent of the Owner.
- (b) In case the Contractor assigns all or any part of any monies due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that:

"It is agreed that the right of and to, any monies due or to become due to the Contractor shall be subject to prior liens of all persons, firms and corporations for services rendered, or materials supplied, for the performance of the work called for in this contract."

GC-34. SEPARATE CONTRACTS:

- (a) The Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. Each Contractor shall confirm with all other contractors that construction shall proceed in a manner to cause the least delay to all concerned and that work of all other contractors may be installed without conflict. The Contractor will coordinate with other contractors on the site insofar as time of installation and covering up of work done by the Contractor or the other contractors.
- (b) If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor already in place, the Contractor shall inspect and promptly report to the Owner any defects in the work already in place or discrepancies between such executed work and the Drawings that render it unsuitable for such proper execution and results. The Contractor's failure to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for reception of his work, except as to defects, which may develop in the other contractor's, work after the execution of the Work.
- (c) Nothing in the Contract Documents shall preclude the Owner's right to do work on site during the period this Contract is in effect. The Contractor shall afford the owner access to the site for the purpose of such work.
- (d) Normal Working Day. The Contractors shall carry on the operations during a normal working day of eight (8) hours whenever possible. All contractors shall confine their operation on the site to a normal working day beginning and ending at the same time.
- (e) If, through acts of neglect on the part of the Contractor, any other contractor or any subcontractor shall suffer loss or damage on the work, the Contractor agrees to settle with such other contractor or subcontractor by agreement or arbitration if such other contractor or subcontractor will so settle. If such other contractor or subcontractor shall assert any claim against the Owner on account of any damage alleged to have been sustained, the Owner shall notify the Contractor, who shall indemnify and save harmless the Owner against any such claim.

GC-35. CLAIMS AND DAMAGES:

Any claim for damage arising under this contract shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials, and shall be adjusted by agreement or by arbitration.

GC-36. PLANS AND SPECIFICATIONS FOR CONSTRUCTION:

- (a) After the award of contract, the Owner, if requested, will furnish to the Contractor, free of charge, up to five (5) copies of plans and specifications necessary for the execution of the work. The Contractor shall pay the Owner for the cost of printing any additional copies of plans and specifications to be furnished by the Owner and requested by the Contractor.
- (b) When necessary for the proper execution of the work, the Owner shall furnish, with reasonable promptness, additional instructions by means of drawings or otherwise. All such additional drawings and instructions shall be consistent with the Contract Documents.

GC-37. FIGURED DIMENSIONS TO GOVERN:

Figured dimensions, when given on the plans, shall be accurately followed, even though they may differ from scaled measurements. No work shown on the plans, the dimensions of which are not figured, shall be executed until instructions have been obtained from the Owner as to the dimensions to be used. Large scale and full size drawings shall be followed in preference to small scale drawings.

GC-38. PLACING DRAWINGS AND SPECIFICATIONS:

The Contractor shall keep a copy of all drawings and specifications on the work, in good order, available to the Owner and to the Owner's representatives and authorized agents. A print of all plans and a copy of specifications will be kept on file with the Owner at all times during the progress of construction. The drawings, specifications, and copies thereof prepared by the Engineer and furnished by the Owner are not to be considered property of the Contractor. They are not to be used on other work, and with the exception of the signed Contract set, are to be returned to the Owner on request at the completion of the work.

GC-39. DRAWINGS FURNISHED BY THE CONTRACTOR:

The Contractor shall supply such working specifications and drawings of devices to be furnished under this Contract as are called for herein or are required by the Owner to make clear the details of equipment and of devices. Such working specifications and drawings must be approved by the Owner.

The Owner's approval of working specifications and drawings of devices to be furnished shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of such will not relieve the Contractor of the responsibility for any error which may exist as the Contractor shall be responsible for the dimensions, design, details, and satisfactory construction of all work.

GC-40. SHOP DRAWINGS:

- (a) The Contractor shall submit to the Owner with such promptness as to cause no delay in his own work or in that of any other contractor, five (5) copies of all shop or setting drawings and schedules required for the work.
- (b) The Owner shall pass upon them with reasonable promptness, and return two (2) copies to the Contractor. The Contractor shall then make any corrections required in the passing upon of the drawings and furnish such other copies of corrected Shop Drawings as may be required. In the event of a dispute as to the adequacy, completeness, and conformance of materials and construction with the Plans and Specifications, the written ruling of the Engineer shall be final.
- (c) The approval of the shop drawings by the Owner or his authorized representative shall not be construed as a complete check. but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the Contractor of the responsibility for any error, which may exist, as the Contractor shall be responsible for the dimensions and design of adequate connections, details, and satisfactory construction of all work.

GC-41. BEGINNING OF WORK, PROGRESS CHART, PROGRESS OF WORK:

- (a) Within five (5) days, or such other time as determined by the Owner, after the date of Notice to Proceed, the Contractor shall prepare and submit for the Owner's approval, a reasonable schedule, showing the order in which the Contractor proposes to carry on the work and the dates on which he will start and complete the several separate features of the work (including procurement of materials, plant and equipment). The progress chart, of suitable scale, will indicate appropriately the completion of the work by the contract completion date and the percentage of work scheduled for completion at any time.
- (b) The Contractor shall, within ten (10) days after being instructed to do so in a written notice from the Owner, commence the work to be done under this contract; and the rate of progress shall be such that the work shall have been completed in accordance with the terms of this Contract within the time of completion specified in the Contract Documents.
- (c) The Contractor shall furnish sufficient forces, construction plant, and equipment, and shall work such hours, including night shifts, overtime operations, and Sunday and holiday work, as may be necessary to insure the prosecution of the work in accordance with the approved progress schedule. If, in the opinion of the Owner, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve the progress and the Owner may require him to increase the number of shifts, and/or overtime operations, days of work, and/or the amount of construction plant, all without additional cost to the Owner.

GC-42. CONTRACTOR'S SUPERVISORY PERSONNEL:

The Contractor shall keep on the work, during its progress, competent and qualified supervisory personnel satisfactory to the Owner. The Contractor's supervisory personnel shall be fully responsible for the safety of the Contractor's labor force and completion of the work and shall be the Contractor's representative on the work. All directions given to him by the Owner or the Owner's authorized representative or agent shall be as binding as if given to the Contractor.

The Contractor shall indicate to the Owner, in writing, the name(s) of supervisory personnel appointed for the work. Contractor's supervisory personnel shall not be changed during the course of the work except with the consent of the Owner and only in such cases in which the supervisory personnel prove to be unsatisfactory to the Owner or Contractor, or terminates employment with the Contractor.

GC-43. AUTHORITY OF THE OWNER AND THE ENGINEER:

All work shall be done under the supervision of the Owner or its Engineer and their designated representatives and performed to the Owner's satisfaction. The Owner and its Engineer shall decide all questions which may arise as to the quality and acceptability of materials furnished, work performed, manner of performance, rate of progress, interpretation of the plans and specifications; all questions as to the acceptable fulfillment of the Contract on the part of the Contractor; and all disputes and mutual rights between contractors. The Owner shall determine the amount and quality of the several kinds of work performed. The Owner and the Engineer shall have the authority to require the Contractor to carry out all orders promptly. The Owner and the Engineer will have the authority to suspend the work wholly or in part, by written suspension order, due to the failure of the Contractor to correct conditions unsafe for the workers or the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for such periods as they may deem necessary due to unsuitable weather; for conditions considered unsuitable for the prosecution of the

Work, or for any other reason deemed to be in the public interest by the exercise of reasonable judgment.

GC-44. DUTIES AND POWERS OF CONSTRUCTION OBSERVERS:

Properly authorized observers shall be considered to be the representatives of the Owner. It shall be their duty to observe those portions of the Work to which they are assigned, and to report deviations from the plans, specifications and other contract provisions which may come to their notice. Any Observer shall have the right to order the work stopped, if in his opinion such action becomes necessary, until the Owner are notified and it has been determined and ordered that the work shall proceed in accordance with contract requirements.

The Owner, Engineer, and their designated representatives shall at all times have access to the Work whenever it is in progress and the Contractor shall provide proper facilities for such access.

The responsibility for construction quality, workmanship and safety rests fully with the Contractor. This responsibility shall not be transferred to the Owner, Engineer, observers or other designated representatives under any condition.

GC-45. WORK DONE WITHOUT OBSERVER PRESENT:

Any work done without the presence of an Observer or other representative of the Owner may be ordered removed and replaced at the Contractor's expense.

GC-46. INSPECTION OF WORK:

The Owner and the Engineer shall at all times have access to the work wherever it is in preparation of progress, and the Contractor shall provide proper facilities for such access and inspection. The Contractor shall give the Owner and the Engineer forty-eight (48) hours prior notice of readiness for inspection of any work ordinarily requiring inspection.

GC-47. SUGGESTIONS TO CONTRACTOR ADOPTED AT HIS OWN RISK:

Any plan or method of work suggested by the Owner or Engineer to the Contractor, not specified or required in the contract, adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor; and the Owner and Engineer shall assume no responsibility therefore.

GC-48. PROMPT AND PROPER ORDERING OF MATERIALS:

All necessary materials subject to possible shortage or long lead time shall be promptly and properly ordered to insure against delay in any portion of the work. To be considered prompt, the materials must be ordered from an acceptable supplier within fifteen (15) days of approval of submittal data, if required, or within fifteen (15) days of issuance of the Notice to Proceed, whichever is later. No extension of the contract time will be granted for delays from late material delivery unless those materials were promptly and properly ordered.

GC-49. DIFFERING SUBSURFACE CONDITIONS:

Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the plans or indicated in the specifications, he shall immediately give notice to the Owner of such conditions before they are disturbed. The Owner and its Engineer will thereupon promptly investigate the conditions, and if it is determined that the current subsurface conditions materially differ from those on the plans or indicated in the specifications, the Owner, through its Engineer, will at once make such changes in the plans and/or specifications as

necessary. Any increase or decrease of cost resulting from such changes will be adjusted in the manner described in GC-50 "Change Orders to the Contract".

GC-50. CHANGE ORDERS TO THE CONTRACT:

- (a) The Owner, without invalidating the contract, may order extra work or make changes by altering, adding to, or deducting from the work. The contract sum shall be adjusted accordingly. All such work shall be executed under the conditions of the original contract, except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. No changes in the work shall be made without having prior consent of the Owner and acceptance by the Contractor of the terms and conditions of the change.
- (b) In the event an immediate agreement cannot be reached, the Owner may at any time, by a written order and without notice to the sureties, make changes in the drawings and/or specifications of this Contract and within the general scope thereof. If such changes cause an increase or decrease in the amount due under this Contract or in the time required for its performance, an equitable adjustment shall be made and the Contract shall be modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing thirty (30) days from the date of receipt by the Contractor of the notification of change; provided, however, that the Owner, if he determines that the facts justify such action, may receive and consider, and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as set forth in GC-60 hereof. But nothing provided in this paragraph shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise herein provided, no charge for any extra work or material will be allowed.
- (c) Change orders shall be executed in accordance with procedure required by the Owner and no work involving the change shall be done by the Contractor until a copy of the approved change order has been received by him. The Owner or Engineer may authorize verbal change orders only where loss of life or property appears imminent. Such changes shall further be reduced to writing within a reasonable length of time in accordance with the procedure herein stated.
- (d) Change orders will be issued for any change in the contract price, materials used, manner of construction, or change in completion time. A no-cost control statement, signed by the Contractor, as may be authorized by the Owner or the Owner's authorized agent, involving no change in price, shall verify minor changes and/or adjustments.
- (e) Contractor's superintendent shall communicate changes in scope and completion time of his Contract to subcontractors and the other contractors whose work on the site may depend on the Contractor's work.
- (f) The contractor will be furnished additional instructions and detail drawings as necessary to carry out the revised or extra work included in the change order. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared that they can be reasonably interpreted as part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.
- (g) The Contractor and the Owner will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required; such drawings, if any, to be furnished by the Owner in accordance with said schedule, and (b) a schedule fixing respective dates for

submission of shop drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

- (h) Charges or credits for work covered by the approved change shall be determined by one or more, or a combination of the following methods at the Owner's discretion.
- (1) Unit price bids previously approved.
 - (2) An agreed lump sum.
 - (i) Proposals of one thousand (\$1000) or less may be submitted by lump sum if approved prior to the submittal by the Owner. All other submittal shall be as indicated by Paragraph 3, below.
 - (ii) If a lump sum cannot be agreed to by all parties (Owner, Engineer, Contractor) a resubmitted requiring breakdown as per Paragraph 3 will be required.
 - (4) The actual cost of:
 - (a) Labor, including foreman.
 - (b) Materials entering permanently into the work at net or Contractor's cost.
 - (c) The ownership or rental cost of construction plant and equipment during the time of use on the extra work.
 - (d) Power and consumable supplies for the operation of power equipment.
 - (e) Insurance, OASI payments and sales tax where payments are based on payroll amount.
 - (f) To the above cost as determined by Paragraph GC-44 (g) 3, there shall be added an allowance of not to exceed 8% for overhead and 8% profit on control orders up to and including \$5,000. For change orders over \$5,000, the allowance for overhead shall not exceed 6% and the allowance for profit shall not exceed 6%. The cost of the Bond, Builders Risk, basic construction plant, home office, general superintendent and the like, shall be considered part of the overhead cost. Add or deduct change orders will be computed on the same basis.
 - (g) For change orders of work where the Contractor has awarded the work to a subcontractor, the prime contractor shall be allowed one fee only in an amount not to exceed 8% for change orders less than \$5,000, and 6% for change orders in excess of \$5,000. Add or deduct change orders will be computed on the same basis.
 - (h) The Owner shall have the right to require actual quotations for materials and/or labor from the respective contractors or suppliers. The materials and labor prices allowed will be at their net cost when computing the amount of the change orders. These quotations will appear on the breakdown prepared by the Contractor and attached to his proposal for a Change Order.
 - (i) Where change orders are drawn to show the change in contract amount between the allowance and the actual cost of an item, whether a credit to the Owner or to the Contractor, the amount of the change order shall be determined by the adding of percentages for sales tax and Excise Tax and a fixed fee not to exceed 8% for profit for change orders less than \$5,000, and a fixed fee not to exceed 6% for profit for change orders in excess of \$5,000. Add and deduct change orders will be computed on the same basis.

GC-51. TIME OF COMPLETION:

The number of consecutive calendar days allowed for the completion of the work is stated in the contract and will be known as the Contract Time. The contract time shall commence ten (10) days after the date of issuance of Notice to Proceed by the Owner. The completion date shall be established by adding the contract time plus ten calendar days to the date of issuance of a written notice to proceed by the Owner.

Time is an essential element of the contract, and it is important that the work be pressed vigorously to completion. The cost to the Owner for administration of the contract, including engineering, inspection and supervision, will be increased as the time occupied in the work is lengthened. The public is subject to detriment and inconvenience when full use cannot be made of an incomplete project.

Time is also of the essence for every portion of the work wherein a definite and certain length of time has been fixed for the completion of that portion of the work.

GC-52. EXTENSION OF CONTRACT TIME:

The number of days for performance allowed in the contract as awarded is based on the original quantities. In the event the Owner orders extra work or changes the work by adding to, or deducting from, the work, the contract time allowed for the performance of the work shall be adjusted on a basis commensurate with the amount and degree of difficulty of the extra work. Claims for extension of time due to extra work or revisions in the work shall be addressed and made at the time of ordering such change in the scope of work.

The Owner may consider the Contractor's claim for an adjustment to the contract time upon being notified by the Contractor in writing within seven (7) days from the beginning of any circumstance beyond the Contractor's control that will delay performance of the work. Such circumstances shall mean unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, public enemy, or the Owner; fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, unanticipated or unusually long materials delivery schedules, and any delays of subcontractors or suppliers occasioned by any of these causes. Upon receipt of notification of delay, the Owner shall ascertain the facts and extent of the delay and notify the Contractor of its decision in the matter.

No time extensions will be granted for delays due to inclement weather and late material delivery for materials not properly and promptly ordered, nor is the Contractor's plea that insufficient time was specified for the performance of the work a valid justification for extension of the Contract Time.

GC-53. LIQUIDATED DAMAGES:

Should the Contractor fail to complete the work within the time agreed upon in the contract, or within such extra time as may have been allowed by change orders to the contract or by formally approved extensions granted by the Owner, there shall be deducted from any monies or amounts due or that may become due the Contractor, the sum of four hundred dollars (\$400) for each consecutive calendar day that the work shall remain uncompleted. This sum shall be considered and treated not as a penalty but as liquidated damages due the Owner from the Contractor by reason

of inconvenience to the public, added cost of engineering and supervision, and other items which have caused an expenditure of public funds resulting from the Contractor's failure to complete the work within the time specified in the Contract.

Permitting the Contractor to continue and complete the work covered by the terms of the Contract after the expiration of the working time provided for therein and inclusive of any extensions granted, shall in no way be construed as a waiver by the Owner of any of its rights under the Contract.

The Owner may waive such portion of the liquidated damages as may accrue after the work is in condition for use in the manner and for the purpose intended.

GC-54. PAYMENT:

In consideration of the faithful performance by the Contractor of all the conditions, provisions and covenants of the Contract Documents to the satisfaction of the Owner, the Owner shall pay to the Contractor the prices stipulated in the Contractor's Bid Proposal as full compensation for everything furnished or done by the Contractor under this Contract. The Owner also agrees to pay in additions such amounts as agreed upon for changes in the work according to GC-60 "Change Orders to the Contract".

Payments to the extent of the value of the work done and materials furnished, less amounts retained and withheld, shall be made to the Contractor at, or about, the end of each month during the process of the Contract. None of such payments shall be held to constitute the Owner's acceptance, in whole or in part, of the work prior to making of the final payment and acceptance in full completion of the Contract.

All material and work covered by partial payments shall thereupon become the sole property of the Owner. This provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.

Final payment of all sums due to the Contractor shall be made within thirty (30) days after the completion and acceptance of the work by the Owner, provided that:

- (a) satisfactory evidence has been provided by the Contractor that all obligations for supplies, materials, equipment, and labor have been paid, discharged, or waived.
- (b) claims for alleged patent or copyright infringement have been settled by the Contractor.
- (d) equitable adjustments in the Contract due to the Owner's acceptance of injured or defective portions of the work not remedied have been made and documented by a formal change order.
- (c) the Contractor has settled all claims arising from alleged damages to the Owner, subcontractors, other contractors, neighboring and adjacent property owners, or any private or personal property thereof, due to the fault of the Contractor.
- (e) all contract disputes between the Contractor and the Owner have been resolved.

GC-55. APPLICATIONS FOR PAYMENT:

The Contractor shall prepare and submit to the Owner an application for each payment on forms supplied in the Contract Documents, and receipts or other documentation showing the cost of, and payment for, materials and labor, including payments to subcontractors.

The Contractor shall schedule a time to meet with the Owner or its representative for the purpose of estimating the work completed to date according to the separate items listed in the Bid Proposal and assessing the value of materials delivered and properly stored at the work site but not yet incorporated into the work. This estimation and assessment shall be the basis of the Contractor's application for payment.

Claims made on account of materials delivered and suitably store at the site, but not incorporated in the work, shall be conditioned upon the submission by the Contractor of bills of sale or such similar documentation as will establish the value of the materials and the Owner's title to such material or otherwise adequately protect the Owner's interest.

Payment for materials delivered to the site but not incorporated into the work will be made only after the materials have been approved and accepted for incorporation into the work. Said materials shall be stored in an approved manner where damage thereto is not likely to occur. It is the Contractor's sole responsibility for the care and protection of the stored materials and for the repair and replacement of stored materials that are lost, stolen, or damaged in any way.

The Contractor may chose to apply for payment for materials not yet incorporated into the work that cannot be stored at the site. The Contractor may do so provided the materials are stored in a bonded or insured commercial warehouse within a geographic radius of 15 miles of the site with the Owner 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 at no additional cost to the Owner. Claims made on account of said materials shall be conditioned upon submission by the Contractor of bills of sale or similar documentation as will establish the value of the materials and the Owner's title to such material or otherwise adequately protect the Owner's interest.

No payment on stored materials as specified herein shall be made on fuel, hardware such as bolts, plates, etc., supplies, perishable materials, or temporary structures which will not become an integral part of the work. No payment will be made for stored materials when the Contractor's unit prices bid are obviously unbalanced as compared to the Engineer's pre-bid estimated unit prices.

GC-56. AMOUNTS WITHHELD:

The Owner may withhold or nullify, on account of subsequently discovered evidence, the whole or part of any application or certificate for payment to such extent as may be necessary to protect itself from loss due to:

- (a) defective work not remedied.
- (b) claims filed or reasonable evidence indicating probable filing of claims.
- (c) failure of the Contractor to make payments properly to subcontractors or for material and labor.
- (d) a reasonable doubt that the Contract cannot be completed for the balance then unpaid.
- (e) damage to another contractor.

When the above grounds are removed, payment shall be made for amounts withheld because of them.

GC-57. PARTIAL PAYMENTS:

Partial payments will be made once each month as the work progresses. Said payments will be based upon estimates prepared by the Owner and the Contractor and applications for payment submitted by the Contractor which illustrate the value of the work performed, including revised or extra work, and materials complete in place in accordance with the Contract and for materials delivered.

No partial payments will be made when the total value of the work done since the last estimate amounts to less than five hundred dollars (\$500).

From the total of the amounts ascertained as payable, including deduction of amounts withheld, an amount equivalent to twelve percent (12%) of the amount of the Contract up to fifty thousand dollars (\$50,000); five percent (5%) of the next two hundred thousand dollars (\$200,000) of the amount of the Contract; and two and one-half percent (2.5%) of the amount of the Contract in excess of two hundred and fifty thousand dollars (\$250,000) will be deducted and retained by the Owner until after completion of the entire Contract in an acceptable manner. The balance, less all previous payments, shall be certified for payment.

When the work under Contract has been completed and accepted, or when the work has been substantially completed to the extent that only minor or incidental operations remain to fully complete all of the work under the Contract, and if the completion of such work is deferred or delayed in compliance with the Contract provisions, or upon order of the Engineer suspending operations by virtue of weather or climatic conditions, or because of seasonal restrictions provided for in the contract; upon written request of the Contractor and consent of the surety, the Owner may prepare an application for payment as calculated from the Contract unit prices.

If the Owner elects to use and occupy the work before acceptance, the Owner shall pay all amounts due under the contract except double the amount the Engineer shall estimate necessary to complete the improvement in accordance with the plans and specifications, or one percent of the contract price, whichever is less, but in any case, not less than five hundred dollars (\$500). No interest may be allowed thereon until thirty days after the work has been fully completed. See paragraph 5-18-13, SDCL 1986, as amended.

GC-58. OWNERS RIGHT TO WITHHOLD CERTAIN AMOUNTS AND MAKE APPLICATION THEREOF:

The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands incurred in the performance of this contract. The Contractor shall furnish satisfactory evidence that all obligations have been paid, discharged, or waived.

If the Contractor fails so to do, then the Owner may, after having served written notice on the said Contractor, either pay unpaid bills, of which the Owner has received written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have

been fully discharged, whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract.

In no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor or his surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner, shall be considered as a payment made in under the Contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payment made in good faith.

GC-59. DEDUCTION FOR UNCORRECTED WORK:

If the Owner deems it expedient to accept injured or defective work not remedied by the Contractor, or work that has not been done in accordance with the Contract, an equitable adjustment will be made with a proper deduction from the Contract price for unsatisfactory work.

GC-60. MEDIATION/ARBITRATION:

Any dispute, controversy or claim arising out of or related to answers, decisions, or interpretations made by the Owner or its Engineer in regard to the Contract and the Work as detailed in GC-43 "Authority of the Owner and the Engineer" that can not be resolved by and between the Owner and the Contractor within ten (10) days shall be submitted by the Contractor to the American Arbitration Association, or a mutually agreed upon qualified alternative dispute organization, for mediation. In the event the Owner or its Engineer fails to make such decision or interpretation within a reasonable amount of time, the Contractor may submit the matter in question or potential dispute for mediation as if the decision had been against the Contractor.

Mediation shall continue until (1) resolution of the dispute or (2) the mediator notifies the parties that it is unlikely that the dispute will be resolved through mediation. If the dispute is not resolved through mediation, the Contractor shall submit the controversy or claim to the American Arbitration Association and demand arbitration.

The Contractor shall deliver the demand for arbitration in writing to the Owner, either personally or by registered mail, within ten (10) days of the receipt of the mediator's notification of failure to resolve by mediation.

The selection of an arbitrator, or arbitrators, and procedures to be followed for arbitration shall be as set forth by the qualified alternative dispute organization agreed upon by the Owner and the Contractor.

The Contractor shall not cause a delay of the Work because of the pending of mediation or arbitration proceedings, except with the written permission of the Owner, and then only until the mediator or arbitrators, as the case may be, shall have an opportunity to determine whether or not the Work shall continue until the matters in dispute have been decided.

GC-61. CONTRACT TERMINATION:

This Contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligation under this Contract through no fault of the terminating party, provided that no termination may be effected unless the other party is given 1) not less than 10 calendar days written notice, delivered by certified mail, return receipt requested, to the last known address of the other party of intent to terminate, and 2) an opportunity for consultation with the terminating party prior to termination. Said notice shall contain the reasons

for such intent to terminate. If after ten (10) calendar days, the reasons for intent to terminate have not ceased, or satisfactory arrangements for the corrections thereof have not been made, the contract shall cease and terminate.

Additionally, if the work should be stopped under an order of any court or other public authority for a period of three months through no fault of the Contractor and notwithstanding stop work orders issued by the Owner in compliance with the Contract Documents, or suspension of the work by virtue of weather, climatic conditions, or seasonal restrictions, the Contractor may, upon written notice delivered to the Owner by certified mail, return receipt requested, stop work or terminate this Contract and recover from the Owner, payment for all work executed to the satisfaction of the Owner and a reasonable profit.

Termination effected by the Owner. Upon termination of the Contract due to the failure of the Contractor to perform its contractual obligations, the Contractor shall promptly discontinue the work and deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries and other information and materials accumulated by the Contractor prior to termination in performing the work whether completed or in progress.

An equitable adjustment in the contract price will be made and shall provide for payment to the Contractor for work performed and expenses incurred prior to the termination. Any payment due to the Contractor at time of such termination may be adjusted to cover any additional costs the Owner may incur because of the Contractor's fault. The Contractor will not be due any anticipated profit on unperformed services or other work, nor will the Contractor be due to termination settlement costs relating to commitments, which had become firm prior to the termination.

In the event of any such termination, the Owner shall immediately serve written notice thereof, delivered by certified mail, return receipt requested, upon the Contractor and its surety. The Surety shall have the right to take over and perform the work within five (5) calendar days from the date of receipt of said notice. If the Surety does not commence performance of the work within this time frame, the Owner may take over the work and prosecute the same to completion by contract or force account at the expense of the Contractor and/or the Contractor's surety.

Termination effected by the Contractor. Upon termination of the Contract due to the failure of the Owner to perform its contractual obligations, the Contractor shall promptly discontinue the work. An equitable adjustment in the contract price will be made and shall provide for payment to the Contractor for work performed and expenses incurred prior to the termination. The equitable adjustment shall include a reasonable amount for additional costs to the Contractor because of the termination including those due to termination settlement costs relating to commitments, which had become firm prior to the termination.

GC-62. STAKING WORK:

The Owner, through its Engineer, shall furnish all necessary stakes for grade and alignment for all work, but it will be the Contractor's responsibility to preserve such stakes after they are once set by the Engineer. Damaged or destroyed stakes will be replaced by the Engineer at the Contractor's cost.

GC-63. LINES AND GRADES:

All work done under this Contract shall be done to the lines and grades shown on the plans. The Contractor shall keep the Owner informed, a reasonable time in advance, of the times and places at which he wishes to do work, in order that the lines and grades may be furnished and necessary measurements for record and payment may be made with the minimum of inconvenience to the Owner and the Engineer and of delay to the Contractor.

GC-64. CUTTING AND PATCHING:

- (a) The Contractor shall do all cutting, fitting, or patching of this work that may be required to make his several parts fit together or to receive the work of other Contractors shown upon, or reasonably implied by, the Plans and Specifications for the completed work, and he shall make good after them as may be directed by the Owner.
- (b) Any cost caused by defective or ill-timed work shall be borne by the party responsible therefore.
- (c) The Contractor shall not cut, dig, burn, weld to, or otherwise alter or modify the work of any other Contractor without the consent of the Owner. The above is particularly applicable in reference to structural members and finished surfaces.
- (d) All cutting, fitting, or patching shall be accomplished only by skilled tradesmen in their respective craft area.

GC-65. SALVAGED MATERIAL:

All salvaged material shall remain the property of the Owner unless specifically stated otherwise in the Specifications.

GC-66. REJECTED MATERIAL:

The Contractor shall remove from the site of the work, without delay, any and all materials or structures brought to the site or incorporated into the Work which has been rejected by the Owner or Engineer for reasons of not being in accord with contract plans, specifications or shop drawings. Upon the Contractor's failure to remove said rejected materials or structures, or failure to make satisfactory progress in so doing, within a period of forty-eight (48) hours after the receipt of written notice ordering such removal, the condemned materials or structure may be removed by the Owner and the cost of such removal be taken out of the money that may be due, or may become due, to the Contractor under this Contract. No such rejected or condemned material shall be again offered for use by the Contractor under this or other contract under this project.

GC-67. USE OF EXPLOSIVES:

Explosives will not be used on this project.

GC-68. PROTECTION OF PUBLIC UTILITIES:

The Contractor shall give reasonable notice to the owner or owners of stream, gas, water, sewer and other pipe lines, or conduits, overhead and underground wire or other structures, either public or private, railroads and other owners of property, when such property is liable to injury or damage during the execution of the work, in order that the owner or owners of such utility or other property may remove or protect the same.

If any private or public property liable to be affected, endangered, or damaged by the construction of this work, is left unprotected by its owner, then the Contractor must do so. The Contractor shall use every precaution on the work to prevent harm or accident to the property, passengers,

employees, or patrons of the public utilities either publicly or privately owned, and to any other person legitimately employed on the premises.

The Contractor shall assume all liability for damages, which may be due to his carelessness, omission or neglect. When required by law, it shall be the Contractor's responsibility to engage the services of professionals licensed to repair, without delay, publicly or privately owned property or utilities damaged by the Contractor during the execution of the Work.

The Contractor shall pursue the work under, along, and near such property as may be liable to damage thereby as rapidly as possible once work is begun. The Contractor shall not be entitled to any damage or extra pay on account of any postponement, interference or delay caused by any such structures or underground conduits or lines being in the line of the work, whether such structures are shown on the plans or not.

GC-69. LAWS AND ORDINANCES:

The Contractor shall keep himself fully informed of all existing and current regulations of the Owner, and County, State and National laws, which in any way limit or control the actions or operations of those engaged upon the work, or affecting the materials supplied to or by them. He shall at all times observe and comply with all ordinances, laws and regulations and shall protect and indemnify the Owner and the Owner's officers and agents against any claims or liability arising from or based on any violation of the same.

GC-70. SITE APPEARANCE, CLEANING AND REPAIR:

The Contractor shall not allow the site of the work to become littered with trash and waste material, but shall maintain the same in a neat and orderly condition throughout the construction period. The Owner and Owner's authorized agents shall have the right to determine what is or is not waste material or rubbish and the manner and place of disposal. On or before the completion of the work the Contractor shall, without charge therefore, carefully clean out all pits, pipes, chambers or conduits and shall tear down and remove all temporary structures built by him, and shall remove all rubbish of all kinds from any of the tracts or grounds which he has occupied and shall leave them in first-class condition. All roadways, staging areas, utilities and other facilities used by the Contractor during the course of the work shall be returned to their original or better condition at the expense of the Contractor.

GC-71. SAMPLES AND MATERIAL TESTS:

When requested by the Engineer, samples or test specimens of materials to be used or offered for use in connection with this work shall be prepared at the expense of the Contractor and furnished by him in such quantities and sizes as may be required for proper examination and test, with all carriage charges prepaid and with information as to their sources. All samples shall be submitted in ample time to permit the making of proper tests, analyses, or examination before the time at which it is desired to incorporate the material into the work. Tests other than those, which can be made on the ground by the Engineer or can be arranged to be made by him elsewhere, shall be made by a properly equipped laboratory of established reputation. The cost of making all tests, and the cost of materials used in such tests, shall be paid by the Contractor. Reports of all tests shall be mailed to the Owner, to the Engineer and to the Contractor.

GC-72. PLACING WORK IN SERVICE:

If desired by the Owner, portions of the work, as completed, may be placed in service. Such use and operation shall not constitute an acceptance of the work. The Contractor shall be liable for defects due to faulty construction until one (1) year has lapsed since the entire work under this contract is finally accepted. The Contractor shall provide adequate and proper access to the work placed in service. If such use increases the cost of, or delays, the Work, the Contractor shall be entitled to such extra compensation, or extension of time, or both, as the Owner may determine.

GC-73. METHOD OF MEASUREMENT:

Unless specifically stated otherwise in this Contract, no extra measurement or measurements according to local custom of any kind shall be allowed in measuring the work under this Contract, but only the length, area, solid contents, number, weight or time in standard units, as the case may be, shall be considered. The Contractor will be required at his expense to furnish all scales and equipment to properly weigh and measure the various units.

GC-74. TESTING OF COMPLETED WORK:

Before final acceptance, all parts of the Work shall be tested and each part shall be in good condition and working order or shall be placed in such condition and order at the expense of the Contractor. All tests of completed work required under this Contract shall be made under the direction of the Engineer by, and at the expense of, the Contractor who shall repair at his own expense all damages resulting therefrom.

GC-75. TESTING OF EQUIPMENT AND ALL CONSTRUCTION:

- (a) When notified by the Contractor that, in his opinion, all work required by the Contract has been completed, a date for the final inspection of the work shall be mutually agreed upon by the Owner and representatives of all other parties involved. After completion of this inspection and all tests, the Owner shall, if in the opinion of the Engineer, all things are satisfactory, issue to the Contractor a certificate of final completion certifying that, in the Owner's opinion, the work required by the Contract has been completed in accordance with the Contract Drawings and specifications. However, the certificate shall not operate to release the Contractor or his sureties from any obligations under the Contract or the Performance Bond, or from any guaranties, warranties, or maintenance bonds required in the Contract Documents.
- (b) The Owner and Engineer shall be permitted access to the project at all times for the purpose of making inspections and tests of the materials and equipment. The Contractor shall provide necessary assistance to the Owner and the Engineer to perform all necessary operation and quality tests on the site. The Contractor will not be required to furnish personnel for tests conducted off the site.
- (c) All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. The Owner will pay for all laboratory inspection service direct, and not as a part of the contract. The Contractor shall pay the cost for transportation of materials to the laboratory or inspection agency for testing.
- (d) Materials of construction, particularly those upon which the strength and durability of the work may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for uses intended.

GC-76. COMPLETION AND ACCEPTANCE OF WORK:

The Engineer, upon the completion of this Work, shall satisfy himself by examination and test that the Work has been finally and fully completed in accordance with the Specifications and Contract, and report such completion to the Owner.

GC-77. RESPONSIBILITY FOR WORK: (WARRANTY)

Neither the final certificates, nor payment, nor any provision in the contract documents, shall relieve the Contractor of responsibility for faulty materials or workmanship.

During the period of one (1) year after the completion of the work covered by this contract and the final acceptance in writing thereof by the Owner, the Contractor shall make all needed repairs arising out of defective workmanship or materials furnished by the Contractor; or both, which in the judgment of the Owner shall become necessary during said period. The Owner is hereby authorized to make such repairs at the Contractor's expense, if, within ten days after the receipt of a written notice to the Contractor, or his agent, the said Contractor shall neglect to make, or undertake with due diligence to make, the aforesaid repairs. However, in the case of an emergency, where in the judgment of the Owner, delay would cause serious loss or damage, repairs may be made without notice being sent to the Contractor and the Contractor shall pay the cost thereof. This one (1) year warranty shall be extended on any component requiring repair or replacement for an additional one (1) year from the date that component is returned to service.

GC-78. NON-COMPLIANCE:

Acceptance of the work upon completion of the project shall not preclude the requirement of strict compliance with the contract documents. The Contractor shall complete or correct upon discovery any faulty, incomplete, or incorrect work not discovered at the time of acceptance. The one year limit specified in GC-77 shall not void nor limit this requirement.

GC-79. WAIVER OF RIGHTS:

Neither the inspection by the Owner or Engineer or any of their employees, nor any order by the Owner for payment of money, nor any payment for, or acceptance of, the whole or any part of the equipment, material, or work by the Owner or Engineer, nor any extension of time, nor any possession taken by the Owner or it's employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or any right to damages herein provided, nor shall any waiver of any breach in this Contract be held to be a waiver of any other or subsequent breach.

GC-80. LIENS:

Neither the final payment nor any part of the retained percentage shall become due until the Contractor delivers to the Owner a complete release of all liens arising out of this Contract, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as he has knowledge or information, the release and receipts include all labor and materials for which a lien could be filed. The Contractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Engineer, to indemnify the Owner against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the Owner may be compelled to pay in discharging such a lien, including all costs and reasonable attorney's fee.

GC-81. FINAL PAYMENT AS RELEASE OF LIABILITY:

No person, firm or corporation other than the signer of the Contract as Contractor now has any interest hereunder and no claims shall be valid, and neither the Owner or any employee or agent thereof, shall be liable or held to pay any money as herein provided.

The acceptance by the Contractor of the final payment shall operate as, and shall be release to, the Owner and every officer and agent thereof, from all claims and liability to the Contractor for anything done or furnished for or relating to the Work, or for any act or neglect of the Owner or any person relating to, or affecting, the Work.

GC-82. PRIORITY OF DOCUMENTS:

In the event the requirements of the individual components of the Contract Documents are found to be in conflict, the provisions of the individual documents that shall have preference and which shall be binding on the parties shall be as follows:

- (1st) Contract or Agreement
- (2nd) Supplemental Special Conditions
- (3rd) General Conditions
- (4th) Technical Specifications including amendments
- (5th) Information and Instructions to Bidder
- (6th) Plans

Discrepancies between provisions in the Contract Documents shall be brought to the attention of the Owner as soon as possible and resolved as specified in GC-7 "Contractor to Check Specifications and Schedule" and GC-8 "Nature and Intent of Contract Documents".

SUPPLEMENTAL SPECIAL CONDITIONS

SC-1. PROJECT OWNER:

"Owner" or the words "Party of the First Part" or other words of similar effect and intended meaning shall be understood to mean and refer to Deuel County Conservation District.

SC-2. CONTRACTOR:

"Contractor" or the words "Party of the Second Part" or other words of similar effect and intended meaning shall be understood to mean and refer to the name of Contractor.

SC-3. PURPOSE AND EFFECT OF THIS AGREEMENT:

This Agreement will detail the responsibilities of the Owner and the Contractor in conducting sediment removal and related activities at Clear Lake, Deuel County, South Dakota in 2000, 2001, and 2002.

This Agreement, and written change orders on its approval by the Owner, shall represent the complete and only description of responsibilities, commitments, and contractual obligations of the Owner and the Contractor for sediment removal and associated activities at Clear Lake.

SC-4. SCOPE OF WORK:

The work under the agreement consists of all activities as listed in the schedule of values, required for the removal of a minimum of 280,000 cubic yards of sediment from Clear Lake by means of one hydraulic cutterhead dredge in accordance with the Contract Documents. It is the intent that partial lake dredging at Clear Lake be accomplished during the 2000, 2001, and 2002 dredging seasons. The Contractor is responsible for the movement of discharge pipe to level sediment in individual sectors of the system. ✓

Unless otherwise specified, the Contractor shall supply all labor, transportation, materials, apparatus, tools, equipment, utility services, and temporary structures necessary for the entire, proper and substantial completion of the dredging work. The contractor shall install, maintain, and remove all equipment or devices not incorporated in the construction. All work shall be accomplished with quality workmanship. Materials provided for incorporation into the Work shall meet the requirements of the specified manufacturer's current published material specifications.

SC-5. SCHEDULE OF VALUES:

The proposal schedule of values attached to the agreement form shall serve as a listing of separate work activities for which payment will be made and the method of payment to be used for each individual work activity, i.e. lump sum, unit price, time and materials, etc. The method of measurement, basis for payment, and a description for individual work activities is included in these special conditions.

The Contractor's unit price for sediment removal was based upon an expected in-lake soft sediment composition of less than 35% sand, less than 80% clay, low non-decomposed organic materials and low amounts of gravel and rocks. If the Contractor finds that due to the presence of these materials in the soft sediment, its daily production has been decreased or its maintenance costs have been increased, the Contractor must inform the Owner within seven (7) days. If this problem cannot be avoided or resolved, then the Contractor will be allowed to adjust the sediment removal unit price as stated in the schedule of values utilizing a change order.

SC-6. SCHEDULE OF VALUES - MOBILIZATION:

The mobilization of the necessary sediment removal equipment to the site will be completed 30 days after notice to proceed. Equipment to be mobilized to the site will include one dredge, one job trailer, one workboat, dredge discharge pipe, and miscellaneous supplies, tools, and equipment.

SC-7. SCHEDULE OF VALUES - PIPE FUSION:

This activity consists of furnishing and fusing discharge pipe in quantities necessary for the project and the placing of the pipe during the project.

Payment for this activity will be made on a lump sum basis. This activity may progress on a percentage basis at the Owner's discretion.

SC-8. SCHEDULE OF VALUES - DREDGE PREPARATION:

It is anticipated that the Contractor will need up to two (2) weeks to prepare the dredge for launch and startup. Work items generally included, but not limited to, in this activity shall consist of:

- (a) removal of protective coverings used during mobilization or winter storage.
- (b) replacement of fluids, filters, coolants, and lubricants.
- (c) installation of spuds.
- (d) cable inspection and replacement as necessary.
- (e) Inspection of equipment superstructure, cutter head, cutter head motor, winches and winch motors, ladder, suction and discharge pipe, dredge pump, service water pump, fuel tanks and lines, hydraulic system, transmission, and engine.
- (f) Other preparatory activities required prior to launch and startup.

Payment for this work activity will be made on a lump sum basis. The Work may progress on a percent completion basis if allowed by the Owner. If allowed, the Contractor shall provide adequate documentation of work completed and labor expended. The cost for this work activity should include only labor, benefits, overhead and equipment necessary for the preparation of the equipment. The cost of repair/replacement parts, contract services for repairs, filters, lubricants, and other disposable items shall be included in the cost for sediment removal.

SC-9. SCHEDULE OF VALUES - EQUIPMENT LAUNCH:

This activity includes equipment launch site preparation and the actual launching of sediment removal equipment onto Clear Lake. The Contractor shall be responsible for all labor, equipment, tools, etc. necessary to prepare the site and to launch the sediment removal equipment.

Payment for this work activity will be made on a lump sum basis upon the successful completion of the equipment launch.

SC-10. SCHEDULE OF VALUES - LAUNCH OF DISCHARGE PIPE AND FLOATS:

The Contractor shall include in the cost for "Launch of Discharge Pipe and Floats" all labor, plant, materials, equipment, tools, and utilities, etc. to:

- (a) Connect the discharge pipe to the dredge.
- (b) Attach adequate flotation devices to that portion of the discharge pipe that will be located on the lake.
- (c) Launch the discharge pipe and floats onto the lake.
- (d) Install discharge pipe from the lake to the sediment disposal facility.

Payment for this work activity will be made on a lump sum basis upon completion. The work may be progressed on a percentage basis by measuring the amount of pipe installed in comparison to the estimated total required to reach from the dredge to the sediment disposal facility.

SC- 11. SCHEDULE OF VALUES - SEDIMENT REMOVAL:

This activity shall consist of the daily operation of the sediment removal activities to remove a minimum of 280,000 cubic yards of sediment from Clear Lake in accordance with the sediment removal work plan developed by the Owner (See Drawing 1). The sediment removal goal shall be to remove between 90,000 and 100,000 cubic yards of sediment per year with appropriate dredge, related equipment and apparatuses.

The Contractor is also charged with the responsibility of notifying the Owner of recommended modifications to the sediment disposal facility. The Owner is responsible for the design, construction and reclamation of the sediment disposal facility and shall be liable for damages to, or failure of, the facilities due to errors, omissions, or neglect on the part of the Owner. The Contractor shall be liable for damage to, or failure of, the facilities due to errors, omissions, or neglect on the part of the Contractor.

In the performance of sediment removal activities, the Contractor shall maintain a daily record of sediment quantities removed and a map indicating the location and depth to which sediment is removed. These daily records of sediment removal quantities shall be submitted to the Owner on a weekly basis. A summary of daily removal quantities and maps of dredged areas shall be submitted monthly with the Contractor's application for payment.

The Owner shall verify the location and sediment quantities removed every week during the dredging season. This will be used as the method to verify the Contractor's sediment removal quantities. Payment for sediment removal will be made on a unit price basis as indicated in the Schedule of Values for the appropriate year for each cubic yard of sediment removed from the lake based on the Owners estimated removed quantities.

The Owner reserves the right to adjust the quantity for sediment removed based upon the weekly review of the Contractor's daily dredging logs and the review of the Owner's estimation of removed sediment quantities. Such quantity adjustment and the associated adjustment of the contract price will be documented by a change order. Alternatively, the Contractor may continue with the Work to its completion. In no case shall the pay quantity for sediment removal exceeded the original proposed quantity without prior written approval of the Owner.

The Contractor shall include in his price for sediment removal all labor, benefits, employer contributions, administration and overhead, equipment, depreciation, plant, materials, transportation, utilities, temporary structures, fluids, lubricants, repair and replacement parts, contract services and equipment for repair and maintenance, tools and disposal of waste fluids. The cost of long-term maintenance, repair/replacement parts, contract services for repairs, filters, lubricants, and other disposable items shall be included in the cost for sediment removal.

The Contractor shall not include the cost of diesel fuel for the dredge nor the cost of equipment or materials furnished by Deuel County, the city of Clear Lake or other local in-kind services in his/her price for sediment removal as these items are being furnished either by the Owner or other parties involved in the project.

SC-12. SCHEDULE OF VALUES - EQUIPMENT REMOVAL AND WINTERIZATION:

The Contractor may be required to remove sediment removal equipment, including discharge pipe and floats, from the lake prior to the lake's freezing over. This activity includes the removal of equipment from the lake, storing of discharge pipe, winterizing the equipment, and securing the equipment for winter storage. It is anticipated that these activities may require between one and two weeks.

Payment for this work activity will be made on a lump sum basis. The Work may progress on a percent completion basis if allowed by the Owner. The cost for this work activity should include only labor, benefits, overhead and equipment necessary for the removal of the equipment from the lake, winterization, seasonal maintenance and storage. The cost of seasonal and long-term maintenance, repair/replacement parts, contract services for repairs, filters, lubricants, and other disposable items shall be included in the cost for sediment removal.

SC-13. SCHEDULE OF VALUES - EQUIPMENT DEMOBILIZATION:

This one-time work activity consists of, but not limited to, removing the spuds from the dredge, disconnecting the floats from the discharge pipe, cutting pipe into lengths suitable for shipping, stacking discharge pipe and floats in storage area for loading, and reclamation of launch site and work site as well as removal of all supplies and equipment to the contractors storage site.

Payment for this activity will be made on a lump sum basis upon completion.

SC-14. DIESEL FUEL FOR DREDGE:

The Owner will provide to the Contractor for use in the dredge up to **50,000 gallons (16,670 gallons per year) of number 2 diesel fuel** at no cost to the Contractor. Inasmuch, the Contractor shall not include in the unit price for sediment removal the cost of fuel.

The fuel will be dispensed directly from the supplier's fuel truck into the dredge fuel tank. Fuel will be delivered in quantities of 500 to 1000 gallons per delivery. The Contractor's foreman or superintendent shall notify the Owner's project coordinator at least 48 hours prior to the requested fuel delivery time.

The fueling process shall be performed under the constant supervision of the Owner's supplier and a representative of the Contractor's labor force. The Contractor will provide and position absorbent booms as a precautionary measure to prevent the spread of any product in the event of a spill during the fueling process. The Contractor will immediately clean up any minor spills with absorbent pads. The Contractor is liable for costs associated with fuel spilled during the refueling process due to errors, omissions, or neglect on the part of the Contractor. The Contractor will not be held liable for costs associated with fuel spilled during the refueling process due to errors, omissions, or neglect of others beyond the Contractor's control. In the event of a spill, the Contractor shall immediately notify the Owner, the South Dakota Department of Natural Resources at 605-773-3296 (business hours, 8:00 - 5:00, M-F) or 605-773-3211 (non business hours) and the National Response Center at 800-424-8802. The Contractor shall take immediate steps to contain any spill.

Prior to the first fuel delivery, the Contractor shall report to the Owner the calculated quantity of fuel stored on the dredge. The Contractor shall submit to the Owner, on a weekly basis, fuel tank measurements in order that fuel consumption can be monitored. The Owner will submit to the Contractor adequate documentation to indicate the cumulative amount of fuel provided. Upon the completion of sediment removal, the Contractor shall once again report to the Owner calculated

quantities of fuel stored on the dredge. Proper arrangements shall be made to ensure that the Owner is credited for fuel provided but not used in the performance of the Work.

SC-15. HOUSING FOR DREDGE CREW PERSONNEL:

The Contractor shall provide housing accommodations and all other associated items at his expense. The Contractor will include all costs associated with housing, per diem, travel and all other personnel costs in the sediment removal unit price for each cubic yard of sediment removed.

SC-16. PROCESSING CONTRACTOR'S APPLICATION FOR PAYMENT:

The Contractor's application for payment will be considered at the Owner's regularly scheduled monthly board meeting. The Owner shall process all payment requests from the Contractor within forty-five (45) days of request of payment from the contractor. The Owner may deny partial or full payment on items, which are in dispute. However, any disputed items in which payment has been withheld must be documented and submitted to the Contractor for his review within ten (10) days after receipt of request for payment. The Owner must work with the Contractor to resolve any payment disputes. If the disputed items cannot be resolved, then the dispute will be resolved as set forth in the Standard General Conditions, Section GC-60.

SC-17. APPLICATIONS FOR PAYMENT/ CREDIT AND PAYMENT POLICY:

The Owner will hold its regularly scheduled monthly meeting. The Contractor shall submit to the Owner his monthly application for payment no later than seven (7) calendar days prior to the Owner's monthly meeting in which dredging related activities have occurred. The Contractor shall be allowed to progress the work through the last day of the month.

The Contractor's applications for payment will be considered at the Owner's regularly scheduled monthly meetings. The Owner shall make payment to the Contractor within fortyfive (45) days after the Owner's consideration of the Contractor's application for payment. Amounts due the Contractor not paid within this time frame shall be subject to finance charge of 1.5% per month from the date the Contractor's application for payment was considered.

The Contractor is directed to the standard general conditions for further information regarding application for payment, amounts withheld, partial payments, retainage, and disputed resolution. The Contractor is reminded that in the event of a discrepancy between the Supplemental Special Conditions and the standard general conditions, the provisions of the supplemental special conditions have preference and take precedence.

SC-18. PROGRESS OF THE WORK:

The Contractor will be required to maintain consistent and diligent progress of the Work. If, in the opinion of the Owner the monthly sediment removal reports indicate that satisfactory progress is not being made the contractor will be notified in writing within ten (10) days of the owners monthly meeting; and the Contractor shall make such adjustments as necessary to bring the Work back on schedule. Unsatisfactory progress of the Work or failure to make the appropriate adjustments to bring the Work back on schedule will be considered as grounds for the Owner to withhold parts of any application for payment in accordance with the standard general condition GC-56 "Amounts Withheld".

SC-19. OWNER'S RESPONSIBILITY FOR PROJECT CONTINUATION:

The Owner shall be held responsible for securing appropriate funding sources and associated water quality permits in order to facilitate the continuation of the project. The Owner shall be responsible for securing any other requirements to facilitate the dredging project.

If the Owner fails or is unable to secure funding, permits or other requirements necessary for the continuation of the project, then the Owner shall immediately notify the contractor and work shall immediately stop. In the event that funding, permits or other requirements necessary for the continuation of the project are temporary in nature, the Owner shall advise the contractor accordingly. When the funding, permits or other requirements necessary for the continuation of the project are obtained, the Owner will issue written notice to the Contractor to proceed. The Owner shall be held liable for all costs incurred and associated with the delay, and the Contractor shall be held blameless and will be allowed to recover all costs incurred as defined in the schedule of values of the agreement during the delay.

In the event the Owner receives notice that funding through grants or other sources are terminated, the permits are terminated or other requirements are terminated which are necessary for the continuation other project, then the Owner shall immediately notify the Contractor and the work shall stop. If the termination of funding, permits or other requirements are permanent in nature, the Owner shall advise the Contractor accordingly. In the event the termination of the funding, permits or other requirements are permanent in nature, then the work shall terminate and the contract shall be terminated. The Contractor shall be held blameless and the Contractor shall be allowed to recover all costs incurred as defined in the schedule of values of the agreement up to the date of the termination and as reasonably necessary for the Contractor to terminate all construction activities.

SC-20. SEDIMENT REMOVAL WORKPLAN:

In the performance of sediment removal activities, the Contractor shall maintain a daily record of sediment quantities removed and a map indicating the location and depth to which sediment is removed. This monthly-verified summary of sediment removal and updated maps shall be submitted to the Owner on a monthly basis along with the Contractor's application for payment. The Owner requires the map to be submitted weekly at the Owner's discretion. The Contractor will adhere to the removal of sediment as detailed in the Sediment Removal Work plan. Any changes or modifications to the Sediment Removal Work plan must be submitted in writing to the Owner and be approved through a "Change Order" by the Owner in advance of such changes or modifications being implemented by the Contractor.

SC-21. SEDIMENT REMOVAL VERIFICATION:

The Owner will verify sediment removal quantities. The Owner shall verify the location and sediment quantities removed every week during the dredging season. This will be used as the method to verify the Contractor's sediment removal quantities. Payment for sediment removal will be made on a unit price basis as indicated in the Schedule of Values for the appropriate year for each cubic yard of sediment removed from the lake based on the verified removed quantities. If there is a discrepancy (deficit) between the estimated quantities of sediment removed as indicated by the Owner's measurements and that which has been recorded by the Contractor, than any deficit will be refunded to the Owner at the rate per cubic yard charged by the Contractor or the Contractor may choose to remove this "deficit" amount during the next dredging period or season at no additional cost to the Owner. Under any and all conditions, the Contractor's final payment

will be withheld until all disputes associated with the Clear Lake Restoration Sediment Removal Project are resolved, but not more than sixty (60) days beyond the end of the project, or interest will accrue at the rate of 1 ½% per month.

If there is a dispute between the quantities of sediment removed as measured by the Owner and Contractor, then the following procedures will be implemented in order to resolve the disputed "payable" quantity:

- 1.) If the disputed quantity is equal to or less than five (5) percent of the total quantity removed during the billing period, then the quantity as reported by the Contractor shall be used as the payable quantity.
- 2.) If the disputed quantity is greater than five (5) percent of the total quantity removed during the billing period, then a qualified representative with the authority to render a decision shall act as a mediator to resolve the dispute. However, if this mediation effort does not resolve the dispute, then the mediation/arbitration procedures established in GC-60 will be implemented.

SC-22. SEDIMENT DISPOSAL FACILITY-DAILY OPERATION/MAINTENANCE/MODIFICATIONS:

The Contractor is also charged with the responsibility of notifying the Owner of recommended modifications to the sediment disposal facility. The Owner is responsible for the design, construction and reclamation of the sediment disposal facility and shall be liable for damages to, or failure of, the facilities due to errors, omissions, or neglect on the part of the Owner. The Contractor shall be liable for damage to, or failure of, the facilities due to errors, omissions, or neglect on the part of the Contractor.

Modifications to the sediment disposal facility may become necessary as the work progresses to ensure the structural integrity of the facility and its proper operation in regard to solids deposition and hydraulic flow control. The Contractor's request to modify the facility must be in writing and shall describe the current operating condition, proposed modifications, and the need for said modifications. The sediment disposal facility may be modified only after the Owner has provided written approval of the Contractor's request. Said modifications, when made by the Contractor at the direction of the Owner, shall be documented through a change order to the Agreement.

SC-23. COMMENCEMENT OF WORK AND NOTICE TO PROCEED:

The Owner will issue written notices to proceed for the separate work activities listed in the schedule of values. The Contractor shall not commence work until ordered to do so in writing by the Owner. However, the Contractor is well within his rights to request the Owner's consideration in issuing the necessary notice to proceed. The Owner shall respond, either favorably or unfavorably, to the Contractor's request for notice to proceed within five (5) working days of receipt of said request.

SC-24. FEDERAL AND STATE AUTHORIZATIONS FOR THE WORK:

The Contractor is hereby notified that the Work has been authorized under Section 404 of the Clean Water Act by the Department of the Army Corps of Engineers, Section 401 of the Clean Water Act by the South Dakota Department of Environment and Natural Resources, and ARSD 74:03:02:47.01 and ARSD 74:03:02:47.02 by the State of South Dakota Department of Environment and Natural Resources.

Applicable terms and conditions of these authorizations have been included in these supplemental special conditions and shall be included in the Contract Documents. Copies of the complete authorizations may be obtained from the Owner by written request.

SC-25. APPLICABLE SECTIONS OF BASIC POLLUTION CONTROL PLAN:

The Contractor will develop a pollution control plan and will be held responsible for the operation of all equipment associated with dredging related activities in accordance with South Dakota Laws and regulations and approved by Deuel County Conservation District and SD DENR.

SC-26. WATER QUALITY MONITORING PROGRAM:

In order to obtain the federal and state authorizations for the project, the Owner has agreed to establish a water quality monitoring program. The purpose of the water quality monitoring program is to establish a water quality baseline and assess the effects of the sediment removal on water quality. The water quality monitoring program will supply data and information for corrective measures, if needed, to minimize or eliminate environmental problems associated with the sediment removal activities. The Owner shall be responsible for the collection and analysis of water samples in accordance with the project's water quality monitoring program. Copies of the Clear Lake Project Monitoring Plan may be obtained from the Owner by written request.

The Owner will immediately notify the Contractor any time the results of the water quality analysis indicate that the sediment disposal facility decant flows are exceeding the numeric criteria established for the beneficial uses assigned to Clear Lake and or the sediment removal activities are adversely affecting the water quality of Clear Lake. In these instances, the Owner will discuss with the Contractor corrective measures necessary to minimize or eliminate the identified problem.

The Contractor may be requested to make adjustments in his method of sediment removal. The Contractor will be expected and required to make such appropriate adjustments. The Contractor is advised that sediment deposition efficiency within the sediment disposal facility will decrease as the amount of sediment stored approaches the facility's design capacity. This reduces efficiency and may require the Contractor to decrease daily production in the latter stages of the project. This adjustment in operation shall not be considered justifiable grounds for changes in the Contract time or price.

SC-27. TEMPORARY BUILDINGS:

Temporary buildings furnished by the Contractor during the performance of the work shall be at the Contractor's expense. Such costs shall be included in the unit prices bid. Temporary buildings are considered incidental to the Work and no separate payment will be made therefore.

- A. Office: The contractor may erect or bring on the site, and maintain in good condition, in accordance with demobilization plan, a temporary, weather tight office for his/her use.
- B. Temporary Toilet:
 - 1. The Contractor shall provide and maintain a sanitary, temporary chemical toilet in close proximity to the work in a location approved by the Owner.
 - 2. The temporary toilet shall be enclosed and weatherproofed and kept in a sanitary condition at all times.
 - 3. Temporary toilet(s) shall be supplied with the following requirements.
 - a. Constructed of fiberglass or (polyethylene) material.
 - b. Equipped with 40 gallon capacity holding tank.

- c. Unit shall have separate urinal and locking door. The unit shall be properly vented.
- d. Maintenance of toilet(s) shall be at a minimum of every two weeks or as required.
- e. Maintenance shall include pump holding tank, wash and deodorize entire unit (weather permitting), equip with four (4) rolls of toilet paper, repair any damages.
- f. The construction of a cesspool or a pit privy is prohibited.

C. Storage Buildings: The Contractor may construct or bring on the site, such storage buildings as necessary to protect materials, tools or equipment for use on the project. Such buildings shall meet with the approval of the Owner and the Contractor, and shall be removed from the site upon completion of the Work.

SC-28. UTILITIES:

The Contractor shall make all arrangements for providing potable water, electricity, and waste disposal necessary for the performance of the Work. Temporary connections to others' existing utilities shall be done by licensed contractors or in-house workforce qualified in the respective trade. Said temporary connections shall be made only after the Contractor has obtained written authorization from the owner of such existing utility. The Contractor shall remove the temporary utility connections upon his completion of the Work.

The Contractor's cost for temporary utilities shall be included in the unit prices bid. Temporary utilities shall be considered incidental to the Work and no separate payment shall be made therefore.

SC-29. DELIVERY AND PROTECTION OF MATERIALS:

- A. All materials to be incorporated into the Work shall be delivered to the site in the original packages, containers, crates and bundles, bearing the name of the manufacturer and the brand. Except as otherwise specified herein, the mixing, installation and application of materials shall be in strict accordance with the printed directions of the manufacturer and supplier.
- B. All materials delivered to the site shall be properly stored off the ground and under cover from dampness. The Contractor shall exercise care in handling units to avoid chipping, abrasion and breakage. Storage piles, stacks, or bins shall be located to protect materials from damage, rust, and contamination.

SC-30. MEASUREMENTS:

- A. The Contractor shall visit the project prior to submitting his bid and shall become thoroughly familiar with the existing conditions at the site.
- B. Before ordering any material or doing any work, the contractor shall verify all measurements at the project and shall be responsible for the correctness of same.

SC-31. LIEN WAIVERS:

Lien waivers will be required on this project prior to the final payment. The Contractor may also be required to execute the following AIA Documents prior to final payment:

- 1. G706 - Contractors Affidavit of Payments of Debts and Claims

2. G706A - Contractors Affidavit of Release of Liens
3. G707 - Consent of Surety Company to Final Payment

SC-32. PROJECT RECORD DRAWINGS:

The purpose of the final project record documents is to provide accurate, factual information regarding all aspects of the work, both concealed and visible, to enable future modification of the work to proceed without lengthy and expensive site measurement, investigation and examination.

Throughout the progress of the Work, the Contractor and owner shall maintain an accurate record of changes to the Contract Documents. Such changes shall be recorded in the final project record documents of the owner.

The final project record documents shall be submitted to the Owner with the Contractor's request for final payment.

To ensure the accuracy and quality of the final project record documents, the Contractor shall:

- (a) Maintain and protect the job set of Record Documents from deterioration, loss, and damaged.
- (b) Thoroughly coordinate changes within the Record Documents, making adequate and proper entries on each page of specifications and each sheet of Drawings and other Documents where such entry is required to show the change properly.
- (c) Using an erasable colored pencil (not ink or indelible pencil), clearly describe the change by graphic line and note as required.
- (d) Date all entries.
- (e) Call attention to the entry by a "cloud" drawn around the area or areas affected.
- (f) In the event of overlapping changes, use different colors for the overlapping changes.

SC-33. DISCOVERY OF HISTORIC OR ARCHEOLOGICAL REMAINS:

The Contractor, upon the discovery of historic or archeological remains, shall immediately stop work and notify the Owner of said discovery. The Contractor shall not resume the Work until written notice to do so has been received from the Owner.

SC-34. ACCESS TO THE WORKSITE:

The Owner, Engineer, South Dakota Department of Environment and Natural Resources, South Dakota Department of Game, Fish and Parks, United States Department of the Army Corps of Engineers, and their representatives shall be permitted access to the site for inspection of the work at any time. Anyone entering or boarding the contractor's equipment must sign a Waiver of Liability form before doing so as well as be accompanied by qualified safety personnel.

SC-35. CONSTRUCTION TECHNIQUES AND REQUIREMENTS:

- (a) The Contractor shall implement construction techniques for sediment and erosion control in areas disturbed by the Contractor's activities. Such activities, not specifically stated in the schedule of values will be negotiated through change orders. These techniques may include, but are not limited to, sediment traps, check dams, silt fences, hay bale barriers, sediment basins, storm water detention ponds, grassed slopes, sod, mulch, geotextile fabrics, and riprap. These techniques are presented in:

- "Erosion Control & Storm Water Quality Guide" and "Erosion Control & Sediment Control", Colorado Department of Transportation.

- Best Management Practices for Soil Erosion, US Environmental Protection Agency, www.epa.gov/seahome/erosion.html
- "Stream Corridor Restoration" Federal Interagency Stream Restoration Working Group, NTIS.

- (b) The Contractor shall limit the clearing of vegetation to that which is absolutely necessary for performance of the Work, and shall perform the Work with due diligence to minimize the time disturbed areas are unprotected against erosion. Seeding and revegetation of disturbed areas and stockpiles will be performed by the Owner.
- (c) Waste material, construction debris, and material stockpiles shall be placed in an upland site free of areas designated as wetlands. Measures shall be taken to ensure that the material cannot enter a watercourse or designated wetland.
- (d) Construction debris shall be properly disposed in a timely manner to prevent the accumulation of unsightly, deleterious, and/or potentially polluted materials. If possible, the preferred method of disposal is by burning. When disposing of construction debris by burning, the Contractor shall follow the "Air Quality Guidelines for Open Burning" found at the end of these supplemental special conditions.

The Contractor shall exercise extreme caution to collect, contain, store, and transport any and all petroleum products, chemicals, or other deleterious materials or substances and prevent dumping, spilling, or other form of discharge of said materials into the environment.

- (e) The Work, including equipment operation, shall be carefully performed such that fill material, petroleum products, chemicals or other deleterious materials are not discharged to watercourses or wetland areas.
- (f) The Contractor shall develop and implement standard operating procedures to reduce the potential for adverse effects to the environment including, but not limited to:
1. Daily inspection to facilitate the early detection of repair and maintenance needs.
 2. Operation and maintenance schedules to ensure that equipment is operating efficiently and properly.
 3. Safety and operational training and meetings.
 4. Ensure that equipment bilge's are kept clean. Fluid spills shall be cleaned up immediately with absorbent pads and biodegradable detergents.
- (g) In regard to recovered materials, waste fluids, wash water, spent absorbent materials:
1. Collect and transport to shore in sealed containers.
 2. Provide secured temporary storage area.
 3. Keep separate to facilitate treatment and disposal.
 4. Analyze to determine appropriate level of treatment and method of disposal.
 5. Dispose at properly permitted recycling or treatment facilities in a timely manner.
 6. Store only single day use quantities of lubricants, coolants, fluids, etc... on the equipment.
 7. Purchase such materials on as-needed basis to minimize the quantity stored on the site.
 8. Ensure that only transfer hoses in good condition are used to fuel the equipment. Require that the transfer hoses contain no splices or couplings, and have automatic shutoff nozzles.

9. No separate payment will be made to the Contractor for implementing these construction techniques and requirements, as they are incidental to the Work. Associated costs shall be included in the various pay items as contained in the schedule of values.

SC-36. GENERAL CONDITION SECTIONS WHICH ARE NOT APPLICABLE:

The Standard General Conditions, which are listed in this document, are general in nature and may be further defined in the Special Supplemental Conditions. The Special Supplemental Conditions take precedence over the Standard General Conditions. The following Standard General Conditions are **not** applicable to this Agreement:

- 1) GC-67. - USE OF EXPLOSIVES NOT USED

SC-37. NONDISCRIMINATION CONDITIONS:

The Contractor shall comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin;
- (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. TT 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. T 794), which prohibits discrimination on the basis of handicaps;
- (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. TT 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (g) TT 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. T 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
- (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

SC-38. CERTIFICATION OF NONDISCRIMINATION:

The Contractor shall comply with all federal statutes relating to nondiscrimination and shall submit to the Owner a Certification of Nondiscrimination in **REPRESENTATIONS AND CERTIFICATIONS** section.

SC-39. WAGE DETERMINATION:

The Contractor shall comply with the provisions of the Davis-Bacon Act (40 U.S.C. TT 276a to 276a-7), the applicable wage rates are documented in **REPRESENTATIONS AND CERTIFICATIONS section.**

SC-40. DISADVANTAGE/ WOMEN'S BUSINESS ENTERPRISE ASSURANCES:

The policy of the South Dakota EPA Construction Grant program is to assure increased Small Business, DBE/WBE participation and to provide assistance and guidance in contracts and sub agreements awarded under EPA grants for the construction of publicly owned facilities. The State will assure opportunities for immediate participation of competent DBE's/WBE's in work performed under grants and promote the development of new disadvantage/ minority firms through a variety of business arrangements. The use of DBE/ WBE goal-oriented systems is a condition of all EPA grant for construction of public facilities. The administration of this program will be flexible and should not be misconstrued as a mandatory set-aside policy. The goal for minority business participation on this project is six percent (6%) of the total dollar value of the job, while the goal for women business participation on this project is two percent (2%) of the total dollar value of the job. The Contractor shall make a "good faith effort" to either meet or exceed these goals. If the Contractor cannot meet these goals, than the Contractor shall provide documentation to the Owner that he has demonstrated positive efforts to meet the State's DBE/ WBE goals.

SC-41. DISADVANTAGE/ WOMEN'S BUSINESS ENTERPRISE ASSURANCES FORM:

The Contractor shall comply with the provisions of the DBE/ WBE goals as stated in SC-43 and shall submit to the Owner the Disadvantage/ Women's Business Enterprise Assurance Form, in **REPRESENTATIONS AND CERTIFICATIONS section.**

SC-42. ELIMINATION OF SEGREGATED FACILITIES:

The Contractor shall certify that he does not and will not maintain any facilities he provides for his employees in a segregated manner, or permit his employees to perform their services at any location under his control where segregated facilities are maintained and shall submit to the Owner the Elimination of Segregated Facilities Form, in **REPRESENTATIONS AND CERTIFICATIONS section.**

SC-43. LABOR STANDARDS:

The Contractor shall fulfill the requirements as outlined in the Labor Standards, in **REPRESENTATIONS AND CERTIFICATIONS section.**

SC-44. LABOR STANDARDS PROVISIONS:

The Contractor shall fulfill the requirements as outlined in the Labor Standards Provisions, in **REPRESENTATIONS AND CERTIFICATIONS section.**

PROPOSAL

To: Deuel County Conservation District – Clear Lake Restoration
 PO Box 348
 222 4th Avenue South
 Clear Lake, SD 57226

Invitation No. CL 01

Date of Request for Proposal: 7/21/2000

Due Date of Proposal: 8/7/2000

South Dakota Lakes & Streams Association, Inc.
 Name of Contractor (type or print)

Name of Project: Clear Lake Sediment Removal

The undersigned herby proposes to remove a minimum of 280,000 cubic yards of sediment from Clear Lake in compliance with the General Conditions and the Supplemental Special Conditions.

**SCHEDULE OF VALUES – PROPOSAL SCHEDULE
 CLEAR LAKE RESTORATION
 SEDIMENT REMOVAL PROJECT**

Description & Unit Price in Words	Estimated Quantity	Unit Price	Extended Price
<i>Dredge Mobilization</i>			
Year 1	1LS	\$ 23,598	\$ 23,598 <i>Incl. \$8,000 bid bond</i>
<i>Pipe Fusion</i>			
Year 1	1LS	\$ 7,540	\$ 7,540
<i>Dredge Preparation</i>			
Year 1	1LS	\$ 6,620	\$ 6,620
Year 2	1LS	\$ 5,834	\$ 5,834
Year 3	1LS	\$ 5,834	\$ 5,834
<i>Equipment Launch</i>			
Year 1	1LS	\$ 3,590	\$ 3,590
Year 2	1LS	\$ 3,142	\$ 3,142
Year 3	1LS	\$ 3,142	\$ 3,142
<i>Launch of Discharge Pipe & Floats</i>			
Year 1	1LS	\$ 2,805	\$ 2,805
Year 2	1LS	\$ 2,468	\$ 2,468
Year 3	1LS	\$ 2,468	\$ 2,468
<i>Sediment Removal</i>			
Year 1	50,000 CY	\$ 1.78 /CY	\$ 89,000
Year 2	125,000 CY	\$ 1.57 /CY	\$ 196,250
Year 3	105,000 CY	\$ 1.72 /CY	\$ 180,600
<i>Equipment Removal & Winterization</i>			
Year 1	1LS	\$ 3,142	\$ 3,142
Year 2	1LS	\$ 3,142	\$ 3,142
Year 3	1LS	\$ 3,142	\$ 3,142
Subtotal	1LS	\$	\$

(Continuation)

Equipment Demobilization
Year 3

1LS \$ 14,086 \$ 14,086

Year 1	<u>136,295</u>
Year 2	<u>210,836</u>
Year 3	<u>209,272</u>
Total Amount Bid	<u>556,403</u>

Contractor's South Dakota Excise Tax License No. 14-001-460423872E-ET-001

INSTRUCTIONS TO PROSPECTIVE PROPOSERS

1. PREPARATION OF REQUEST FOR PROPOSAL (RFP)

- a) Potential Contractors shall examine all instructions. Failure to do so shall be at the Contractor's risk.
- b) Each contractor shall furnish all information required by the Request for Proposal utilizing the Deuel County Conservation District. Any additional information, which may be required, shall be attached on your firm's letterhead. The contractor shall sign the Proposal and print or type his name in the space provided. The person signing the proposal must initial erasures or other changes.
- c) Unit price for each item shall be shown unless otherwise specified. A total shall be entered in the Total column of the Proposal for each item quoted. In case of discrepancy between a unit price and extended price, the unit price shall govern. Apparent errors in extension of unit prices will be corrected. Apparent errors in addition of lump sum and extended prices will be corrected, as well as misplaced decimal points.
- d) Contractor must state a definite time for delivery of material, equipment, supplies, and/or services, which are proposed to be provided.
- e) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

2. EXPLANATION TO BIDDERS

Any explanation desired by a prospective proposer in reference to the meaning or interpretation of the Request for Proposal, drawings, specifications, etc., shall be directed to the Buyer mentioned on Page 3, Item 6.1, of the Request for Proposal. Sufficient time to allow a written reply before the submission of the proposal should be considered. Any information given to a prospective proposer concerning a solicitation will be furnished to all prospective proposers in the form of an addendum to the Request for Proposal if, in Deuel County Conservation District opinion, the lack of such information would be prejudicial to uninformed bidders.

3. ACKNOWLEDGMENT OF SUPPLEMENTAL NOTICE

Receipt by a proposer of an addendum must be acknowledged by dating and affixing the addendum number to the first page of the Request for Proposal in the space provided.

INSTRUCTIONS TO PROSPECTIVE PROPOSERS

4. SUBMISSION OF PROPOSALS

- a) Proposers shall respond to this Request for Proposal by completing all required information, signing and returning the Request for Proposal inclusive with all applicable attachments there to:

Deuel County Conservation District
Clear Lake Restoration
PO Box 348
Clear Lake, SD 57226
Attention: Elois Redlin

- b) Telegraphic proposals will **NOT** be considered.
- c) Proposals shall be submitted on a firm, fixed unit priced basis unless otherwise requested.
- d) Samples of items or reference information, etc., when required, must be submitted within the time specified in the Request for Proposal.
- e) Prairie Partners, Inc. is under contract as the Project Engineer.
- f)
- f) The Deuel County Conservation District is the non-federal project sponsor for the work.

5. DECLINING TO RESPOND

If no bid is to be submitted, a letter or fax should be sent to Deuel County Conservation District advising whether future Requests for Proposals for the type of material, equipment, supplies or services covered by the Requests for Proposal are desired. Failure to do so may result in removal from the source list for the type of material, equipment, supplies or services covered by the Request for Proposal.

6. MODIFICATION AND/OR WITHDRAWAL OF PROPOSALS

Any proposer may withdraw his/her proposal by written or telegraphic notice to Deuel County Conservation District prior to time of proposal deadline, or may withdraw the proposal in person or through an authorized representative, provided identity is made known.

INSTRUCTIONS TO PROSPECTIVE PROPOSERS

7. LATE BIDS, MODIFICATIONS AND WITHDRAWALS

- a) The Contract will be awarded to the lowest responsive, responsible proposer. A proposal may be rejected by Deuel County Conservation District as non-responsive if: (i) the proposal fails to conform to the material requirements of the Request for Proposal; (ii) proposer attempts to modify the provisions of the Request for Proposal and/or impose conditions contrary to those provisions.
- b) Deuel County Conservation District reserves the right to reject all proposals, and/or to waive any informalities and minor irregularities in proposals received.
- c) Deuel County Conservation District shall have the right to award a Contract based on proposals received, without further discussion of such proposals.
- d) Deuel County Conservation District shall have the right, unless a proposer appropriately qualifies his proposal, to accept and subsequently award a Contract for any divisible segment of the work scope from the total offered by the proposer.
- e) A written Contract mailed or otherwise furnished to the successful proposer within the time for acceptance specified in the proposal shall be deemed to constitute acceptance of that proposer's offer and to result in a binding Contract without further action by either party. It is understood that, after receipt of hard copy documents, the Acknowledgement and Acceptance portion of the Contract will be signed as is and returned as instructed.

8. BID DOCUMENT SUBMITTAL CHECKLIST

The following administrative and technical documents shall be submitted with the prospective Project Number CL01.

Administrative Document Submittals

- a) Request for Proposal Form ✓
- b) Representations & Certifications Form ✓
- c) Supplemental Proposal Information _____

REQUEST FOR PROPOSALS

ISSUED BY: Deuel County Conservation District
Clear Lake Restoration
PO Box 348
222 4th Avenue South
Clear Lake, South Dakota 57226
Attention: Elois Redlin

INVITATION NO. *CL 01*

DATE ISSUED:

NAME AND LOCATION OF PROJECT:

Clear Lake Sediment Removal Project
Clear Lake, South Dakota

SCOPE OF WORK

Sediment Removal of 280,000 cubic yards

<u>Title</u>	<u>Rev.</u>	<u>Date</u>
Specifications	0	(date)
Drawings	0	(date)

- 1. Receipt of Proposals.** Sealed proposals for furnishing all labor, equipment and materials and performing all work for the project described herein will be received on August 7, 2000 2p.m., local time at place of proposal opening, Deuel County Conservation District Office 222 4th Avenue, Clear Lake, South Dakota 57226 and then opened. **FAXED PROPOSALS ARE NOT ACCEPTABLE.** This is a public bid opening.
- 2. Revision of Documents Prior to Receipt of Proposals.** The right is reserved, as the interest of Deuel County Conservation District may require or amend any of the documents listed in the "Table of Contents" for this Request for Proposal. Such revisions and amendments, if any, will be announced by an addendum, or addenda, to this Request for Proposal for proposers. If the revisions and amendments are of a nature, which require material changes in quantities or prices proposal, or both, the date set for proposal opening may be postponed by Deuel County Conservation District.
- 3. Assignment or Transfer of Proposal.** The Request for Proposal Documents may not be further transferred to any other entity. The only exception shall be in the case of obtaining lower tier suppliers to support the primary proposal. Prospective proposers who choose not to submit a proposal shall destroy or return the RFP documents.

REQUEST FOR PROPOSALS

- A. A Request for Proposal package will only be furnished prospective proposers and material and equipment suppliers, upon receipt of written request, as provided by acknowledgement in the Advance Notice.
 - B. A complete Request for Proposal package, including the specifications, will be available for inspection until the time set for receiving proposals, at the office of the Deuel County Conservation District Office 222 4th Street, Clear Lake, South Dakota 57226 or at Prairie Partners, Inc, 309 4th Street, Brookings, South Dakota 57006.
4. **Explanations and Interpretations.** Any explanation desired by proposers regarding the meaning and interpretation of the Plans and Specifications must be requested in writing or by FAX 605/692-5362 to this office by *(limit date)* with sufficient time allowed for a reply to reach them before the submission of their proposals. Oral explanations or instructions given before the award of the Contract will not be binding. Any interpretation made will be in the form of an addendum and will be furnished to all proposers and its receipt by the proposer shall be acknowledged.
5. **Responsible Prospective Contactor.** To be considered for an award, a proposer must be able to demonstrate to the satisfaction of Deuel County Conservation District that:
- A. Has (or is able to obtain) the necessary financial resources, organization, experience, technical skill, equipment and facilities to successfully perform the work.
 - B. Is able to comply with the specified performance schedule.
 - C. Has a satisfactory record of performance, integrity and business ethics.

Prior to award of a Contract Deuel County Conservation District may request the proposer to submit a statement of facts in sufficient detail and with adequate support to demonstrate that the proposer meets the foregoing standards.

6. **Submission of Proposals.**

- A. Proposals shall be submitted on the forms furnished, or copies thereof, and must be manually signed. If erasures or other changes appear on the forms, each such erasure or change must be initialed by the person signing the proposal.
- B. The form of proposal will provide for a quotation of a price, or prices, for one or more items which may be lump sum proposals, alternate prices, scheduled times resulting in a proposal on a unit of work or a combination thereof, etc. Where required on a proposal form, proposers must quote on all items, and they are warned that failure to do so may disqualify the proposal. Prices on all items shall be required for the proposal.

REQUEST FOR PROPOSALS

- C. The proposal as provided and the subsequent Contract shall be on a firm fixed unit price basis.
- D. Offeror warrants its proposal to be firm for a period of sixty (60) calendar days from the due date for proposals under this Request for Proposal.
- E. Alternative proposals will not be considered unless called for.
- F. Modification by telegraph of proposals already submitted will be considered if received prior to the time fixed in the Request for Proposal. Telegraphic modifications shall not reveal the amount of the original or revised proposal.
- G. Proposal must be submitted as directed on the proposal form.
- H. No responsibility will attach to Deuel County Conservation District for the premature opening of, or the failure to open, a proposal not properly addressed and identified.
- I. Proposals shall be identified and addressed as follows:

Deuel County Conservation District
Clear Lake Restoration
PO Box 348
Clear Lake, SD 57226
Attention: Elois Redlin

Project No.CL 01

DO NOT OPEN - SEALED PROPOSAL

7. Late Proposals.

Proposals received in the office designated in the Request for Proposals after the exact time set for opening are "late proposals".

- A. A late proposal, modification of proposal, or withdrawal of proposal shall not be considered unless received before Contract award, and either --
 - 1. It was sent by registered or certified mail not later than 5 calendar days before the proposal receipt date specified; or
 - 2. It was sent by mail (or telegram if authorized) and it is determined by Deuel County Conservation District that the late receipt was due solely to mishandling

REQUEST FOR PROPOSALS

by Deuel County Conservation District after receipt at Deuel County Conservation District Office.

- B. The only acceptable evidence to establish the date of mailing of a late proposal, modification, or withdrawal sent either by registered or certified mail with a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal, modification, or withdrawal shall be deemed to have been mailed late. (The term "postmark" means a printed, stamped, or otherwise placed impression [exclusive of a postage meter machine impression] that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service. Therefore, proposers should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.)
 - C. The only acceptable evidence to establish the time of receipt at the Deuel County Conservation District Office is the time/date stamp of such installation of the proposal wrapper or other documentary evidence of receipt maintained by the installation.
 - D. Notwithstanding the above, a late modification of an otherwise successful proposal which makes its terms more favorable to the Deuel County Conservation District will be considered at any time it is received and may be accepted.
8. **Withdrawal of Proposals.** Proposals may be withdrawn by written or telegraphic request received from proposers prior to the time fixed for opening. Negligence on the part of the proposer in preparing the proposal confers no right for the withdrawal of the proposal after it has been opened.
9. **Multiple Proposals.** If more than one proposal is offered by any one party, by or in the name of his or their clerk, partner, or other person, all such proposals will be rejected. A party who has quoted prices to a proposer is not thereby disqualified from quoting prices to other proposers, or from submitting a proposal for the work.
10. **Rejection of Proposals.** Deuel County Conservation District reserves the right to reject any and all proposals when such rejection is in the interest of Deuel County Conservation District; to reject the proposal of a proposer who has previously failed to perform properly or complete on time contracts of a similar nature; and to reject the proposal of a proposer who is not, in the opinion of Deuel County Conservation District in a position to perform the work as specified in the Bid Proposal.
- 1) Any proposal, which fails to conform to the essential requirements of the Request for Proposal, such as specification, delivery schedule, or permissible alternates thereto, shall be considered non-responsive, and shall be rejected.

A proposer will be notified as to whether or not he is the successful proposer.

REQUEST FOR PROPOSALS

11. Award of Contract.

- A. Deuel County Conservation District will award subject to the availability of funds, reserves the right to award the contract on the basis of current price, schedule and delivery or any combination thereof that is determined by Deuel County Conservation District as most.
- B. The bid package will be awarded as soon as practicable to the lowest responsible proposer, provided his proposal is reasonable, responsive to the essential requirements of the Request for Proposal, and it is in the best interest of the Deuel County Conservation District to accept it. Deuel County Conservation District agrees to provide notice of award within sixty (60) calendar days from the date on which the proposals are officially opened. The proposer agrees, upon receipt of written notice of award of the bid package to finalize, execute, and submit to Deuel County Conservation District within seven (7) calendar days after receipt of such award notice, a bid package in the form attached to this Request for Proposal as completed by insertion of the items awarded and the applicable prices shown on his proposal.
- The bid package will be awarded to a responsible proposer whose proposal will be most advantageous to price, qualifications, and other factors considered. In addition, to be considered for award, a proposer must be able to affirmatively demonstrate to the satisfaction of Deuel County Conservation District, that he has (or is able to obtain) the necessary experience, capability, technical skills, equipment, organization, and financial resources, to successfully perform the contract work within the performance time specified. Prior to award of bid package, the apparent successful proposer may be required to submit a statement of facts, in sufficient detail and with proper support, to demonstrate that he meets the foregoing requirements.
 - The right is reserved by Deuel County Conservation District to reject any and all proposals and to disregard minor irregularities in proposals received. Deuel County Conservation District further reserves the right to award the bid package at its discretion to any proposer other than the one proposing the lowest price, on the basis of its evaluation of the foregoing criteria. Proposers are advised that, although negotiations may follow receipt of proposals, award may be made without discussions on proposals received and thus proposals should be submitted initially on the most favorable terms with respect to price, technical exceptions, completeness, and the foregoing criteria.
 - Specific attention is directed to the fact that time is of the essence in this bid package. The Proposer selected will be expected to perform the work under the bid package in strict compliance with the requirements set forth therein.

REQUEST FOR PROPOSALS

- C. Deuel County Conservation District reserves the right to waive any informality in proposals received when such waiver is in the best interest of Deuel County Conservation District and the Deuel County Conservation District. In case of error in the extension prices, the unit price will govern.
- D. Deuel County Conservation District further reserves the right to accept or reject any or all items of any proposal, unless the proposer qualifies such proposals by specific limitation; also to make an award to the proposer whose aggregate proposal on any combination of proposal items is low.

12. Assignment of the Bid Package

Neither this Bid Package nor any interest herein nor claim there under shall be assigned or transferred by the Contractor, except as expressly authorized in writing by Deuel County Conservation District. This Bid Package and all the provisions provided herein may at Prairie Partner's sole unilateral option be assigned by Deuel County Conservation District to its lower-tier general subcontractor, the DEUEL COUNTY CONSERVATION DISTRICT or its designees.

- 13. Affirmative Action Requirements.** If the proposal amount exceeds \$10,000.00, the proposer to whom the award is made must comply with the requirements, terms and conditions of the Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

14. Information Regarding Buy American Act.

The Buy American Act (41 U.S. C. 101 - d) requires that only domestic construction materials be used in construction in the United States, except when --

- A. The cost would be unreasonable as determined in accordance with FAR 25.203;
- B. The Department of Army determines that use of a particular domestic construction material would be impracticable; or
- C. One or more Government agencies have determined that the construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality (see FAR 25.108)

15. Supplemental Proposal Information

The Proposers must submit the following informational items with proposals as applicable. Failure to provide the listed information may result in disqualification of the proposals at the discretion of Deuel County Conservation District.

REQUEST FOR PROPOSALS

- A. Narrative description of the proposers plan to perform the work. The narrative shall include information regarding the proposers total capacity, current and projected workload pertaining to the material as specified in this Bid Package.
- B. Contractor shall submit the following with proposal:
 - 1. List of equipment proposed for use on the project.

16. Schedule

In submitting his proposal, the proposer acknowledges that he has reviewed and understands fully the DELIVERY SECTION of the Draft Contract and that he has based his proposal on providing such personnel, equipment, and material as may be required to fulfill the delivery requirements.

- A. The Proposer awarded the Contract shall perform the work within (written and number) calendar days after receipt of the written notice of award, or no later than (date)
- B. The contractor agrees that the above time of completion and the price of this bid include any/all overtime work necessary to meet the completion dates or to avoid major interferences with concurrent construction of related operations.

REPRESENTATIONS AND CERTIFICATIONS

Representation And Certifications

1. CERTIFICATION OF INDEPENDENT PRICE DETERMINATIONS

A. The bidder certifies that:

- 1) The prices in this offer have been arrived at independently without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offer or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
- 2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly to any other offer or competitor before bid opening (in case of a formally advertised solicitation) or subcontract award (in the case of an negotiated solicitation) unless otherwise required by law, and
- 3) No attempt has been made or will be made by the offeror to induce any concern to submit or not to submit an offer for the purpose of restricting competition.

B. Each signature on the offer is considered to be a certification by the signatory that the signatory:

- 1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs a. 1) through a. 3) above.

Donald L. Marquardt - Executive Director
(Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization;)

- 2) As an authorized agent, does certify that the principals named in subdivision b. above have not participated, and will not participate, in any action contrary to subparagraphs a. 1) through a. 3) above; and

C. If the offeror deletes or modifies subparagraph a. 2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

2. CONTINGENT FEE REPRESENTATION & AGREEMENT

A. Representation. The offeror represents that, except for full-time bona fide employees working solely for the offeror, the offeror--

REPRESENTATIONS AND CERTIFICATIONS

(Note: The offeror must check the appropriate boxes. For interpretation of the representation, including the term "Bona Fide Employee", see Subpart 3.4 of the Federal Acquisition Regulation.)

- 1) has, has not employed or retained any person or company employed to solicit or obtain this Subcontract; and
- 2) has, has not paid or agreed to pay to any person or company or retained to solicit or obtain this subcontract any commission, percentage brokerage, or other fee contingent upon or resulting from the award of this Subcontract.

B. Agreement. The offeror agrees to provide information relating to the above representation as requested by the Contract Officer and, when subparagraph a. 1) or a. 2) is answered affirmatively, to promptly submit to the Contract Officer.

- 1) A completed Statement of Contingent or Other Fees; or
- 2) A signed statement indicating that the SF 119 was previously submitted to the same Contract Officer including the date and applicable solicitation or subcontract number, and representing that the prior SF 119 applies to this offer or quotation.

3. TYPE OF BUSINESS ORGANIZATION

The offeror or quoter, by checking the applicable box, represents that it operates as a corporation, an individual, partnership, a non-profit organization, or a joint venture incorporated under the laws of the State of South Dakota.

4. SMALL BUSINESS CONCERN REPRESENTATION

The offeror represents and certifies as part of its offer that it is, is not a small business concern and that all, not all end items to be furnished will be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico. "Small Business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualifies as a small business under the criteria and size standards in 13 CFR.

5. SMALL DISADVANTAGED BUSINESS CONCERNS REPRESENTATION

A. Representation. The offeror represents that it is, is not a small disadvantaged business concern.

REPRESENTATIONS AND CERTIFICATIONS

B. Definitions.

As used in this Subcontract, the term "Small Disadvantaged Business Concern" means a "small business concern-- (as defined in paragraph 20.B. preceding) -- owned and controlled by socially and economically disadvantaged individuals",

1. Which is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged; or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals; and
2. Whose management and daily business operations are controlled by one or more such individuals.

"Native Americans" means American Indians, Eskimos, Aleuts, and native Hawaiians.

"Asian-Pacific Americans", as used in this provision, means a United States citizen whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Kampuchea (Cambodia), Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, or the Federated States of Micronesia.

"Subcontinent-Asian Americans" means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal.

- C. Qualified Groups. The offeror shall presume that socially and economically disadvantaged individuals include women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans, and other individuals found to be socially and economically disadvantaged by the Small Business Administration pursuant to section 8 a) of the Small Business Act [3 CFR 124.105 c)] and PL 12-104.

6. WOMEN-OWNED SMALL BUSINESS REPRESENTATION

- A. Representation. The offeror represents that it is [] is not a women-owned small business concern.

B. Definitions.

"Small business concern," as used in this provision means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR.

REPRESENTATIONS AND CERTIFICATIONS

“Women-owned small businesses,” as used in this provision means small business concerns that are at least 51 percent owned by woman who are United States citizens and who also control and operate the business.

“Control” as used in this provision means exercising the power to make policy decision.

“Operate” as used in this provision, means being actively involved in the day-to-day management of the business.

7. CERTIFICATION OF NONSEGREGATED FACILITIES

- A. “Segregated Facilities” as used in this provision, means any waiting rooms, work areas, restrooms, and washrooms and eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.
- B. By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity Article in the Contract.
- C. The offeror further agrees that (except where it has obtained identical certifications from proposed lower-tier Subcontractors for specific time periods) it will --
- 1) Obtain identical certifications from proposed lower-tier Subcontractors before the award of Subcontract under which the lower-tier Subcontractors will be subject to the Equal Opportunity Article,
 - 2) Retain the certifications in the files, and
 - 3) Forward the following notice to the proposed lower-tier Subcontractors (except if the proposed lower-tier Subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE LOWER-TIER SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES.

A Certification of no segregated facilities must be submitted before the award of a Subcontract under which the lower-tier Subcontractor will be subject to the Equal Opportunity Article. The certification may be submitted either for each (sub)

REPRESENTATIONS AND CERTIFICATIONS

Subcontractor or for all Subcontracts during a period (i.e., quarterly, semi-annually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

8. PREVIOUS SUBCONTRACTS AND COMPLIANCE REPORTS

The offeror represents that --

- A. It has, not participated in a previous Contract or Subcontract subject either to the Equal Opportunity Article of this solicitation, the Article originally contained in Section 310 of Executive Order No. 10925, or the Article contained in Section 201 of Executive Order No. 11114,
- B. It has, has not, filed all required compliance reports, and
- C. Representations indicating submission of required compliance reports, signed by proposed Subcontractors, will be obtained before Subcontract Awards.

9. BUY AMERICAN CERTIFICATE

The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled "Buy American Act--Construction Materials"), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Exclusive End Products

Country of Origin

(List as necessary)

Offerors may obtain from the Contractor lists of articles, materials, and supplies excepted from the Buy American Act (listed at 25-108 of the Federal Acquisition Regulation).

10. CLEAN AIR AND WATER

REPRESENTATIONS AND CERTIFICATIONS

(Applicable if the bid or offer exceeds \$100,000, or the Subcontractor has determined that orders under an indefinite quantity contract in any year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c8 (c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319 (c)) and is listed by EPA or is not otherwise exempt.) The bidder or offeror certifies as follows: a) Any facility to be utilized in the performance of this proposed contract has , has not , been listed on the Environmental Protection Agency List of Violating Facilities. b) He will promptly notify the contracting officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility which he proposed to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities. c) He will include substantially this certification, including this paragraph (c), in every nonexempt subcontract.

ORGANIZATION CONFLICTS OF INTEREST

- A. Offeror warrants , does not warrant , that, to the best of his knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest.
- B. Offeror agrees , does not agree , that, if after an award, an organizational conflict of interest with respect to this contract is discovered, an immediate and full disclosure in writing shall be made to Deuel County Conservation District, and shall include a description of the action, which the Offeror has taken or proposes to take to avoid or mitigate such conflicts.

12. PARENT COMPANY AND EMPLOYER IDENTIFICATION NUMBER

Each Bidder will furnish the following information by filing in the appropriate blocks:

- A. Is the bidder owned or controlled by a parent company as described below:

Yes No

(For the purpose of this bid, a parent company is defined as one, which either owns or controls the activities and basic business policies of the bidder. To own another company means the parent company must own at least a majority (more than 50%) of the voting rights in the company. To control another company, such ownership is not required; if another company is able to formulate, determine or veto basic business policy decision of the bidder such other company is considered the parent company of the bidder. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements or otherwise.)

- B. If the answer to a. above is "yes" bidder will insert in the space below the name and principal office address of the parent company.

REPRESENTATIONS AND CERTIFICATIONS

 N/A _____
(Name) (Address)

C. Bidder will insert in the space(s) below the Employer's Identification Number (E.I. No., Federal Social Security Number used on Employer's Quarterly Federal Tax Return. U.S. Treasury Department Form 941).

 46-0423872
E.I. No. of Bidder

E.I. No. of Parent Company (if any)

13. CERTIFICATION REGARDING LOBBYING

Federal Register Vol. 54, No. 243, dated December 31,
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

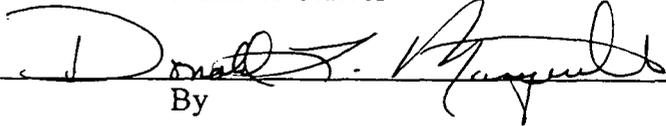
- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influence or attempting to influence an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US Code. Any person who fails to file the required certification shall be

REPRESENTATIONS AND CERTIFICATIONS

subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

South DAKOTA Lakes & Streams, INC.
Name of Offeror


By

DONALD L. MAROWARDT - Executive Director
Name and Title of Signer

8/6/2000
Date Signed

