

SECTION 7 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

- 7.1 LAWS TO BE OBSERVED** - The Contractor shall keep fully informed of and comply with all Federal, State and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which may affect those engaged or employed on the work, or which may affect the conduct of the work. The Contractor shall protect and indemnify the Department and its representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor, Subcontractors, Suppliers of materials or services or their employees.
- 7.2 PERMITS, LICENSES AND TAXES** - The Contractor shall procure required permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of the work.
- 7.3 PATENTED DEVICES, MATERIALS AND PROCESSES** - If the Contractor employs any design, device, material or process covered by letters of patent or copyright, the Contractor shall provide for their use by legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Department, affected third party, or political subdivision from any and all claims for infringement resulting from the use of such patented design, device, material or process, trademark or copyright, and indemnify the Department for costs, expenses, and damages caused by reason of any infringement during the prosecution or after the completion of the Contract.
- 7.4 RESTORATION OF SURFACES OPENED BY PERMIT** - The right to approve a permit to construct or reconstruct utility service in the highway or street is reserved by the Department for the authorities of the municipality in which the work is done. The Contractor shall not be entitled to consideration for damages for delays resulting from work performed under a permit.
- When an individual, firm or corporation is authorized through a duly executed permit from the Department, the Contractor shall allow parties bearing such permits to make openings in the highway. When ordered by the Engineer, the Contractor shall make the necessary repairs resulting from this work. This work will be paid for as extra work, or as provided in the Contract and will be subject to the same requirements as the work performed under the Contract.
- 7.5 FEDERAL AID PARTICIPATION** - When the United States Government participates in the cost of the work covered by the contract, the work shall be under the supervision of the Department but subject to the inspection and approval of United States Government officials in accordance with the applicable Federal Statutes and rules and regulations. Such inspection shall not make the Federal Government a party to this contract and will not interfere with the rights of the parties to the Contract.
- 7.6 SANITARY HEALTH AND SAFETY PROVISIONS** - The Contractor shall provide and maintain in a neat, sanitary condition accommodations for the use of employees as necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction. Attention is directed to Federal, State and local laws, rules and

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regulations concerning construction safety and health standards.

- 7.7 PUBLIC CONVENIENCE AND SAFETY** - The Contractor shall conduct his work to minimize obstruction to traffic. The safety and convenience of the general public and the residents along the highway and the protection of persons and property shall be provided for by the Contractor as specified under Section 4.4.

The Contractor shall be required to eliminate dust which causes a hazard or nuisance, by the application of water or other acceptable measure in the amounts directed by the Engineer. When the item does not appear in the contract, the item will be paid for at the rate specified in the Price Schedule for Miscellaneous Items. When the item appears in the contract, the item so used will be paid for at the contract unit price specified in the Price Schedule for Miscellaneous Items, which ever is less.

- 7.8 RAILWAY-HIGHWAY PROVISIONS** - When the Contractor is required or elects to haul materials across the tracks of any railway, arrangements shall be made by the Contractor with the railway company for new private crossings required or for the use of existing private crossings.

Work to be performed by the Contractor on the railroad right-of-way shall be performed without unnecessary interference with the movement of trains or traffic upon the track of the railway company.

- 7.9 CONSTRUCTION OVER OR ADJACENT TO NAVIGABLE WATERS** - All work over, on or adjacent to navigable waters shall be conducted without interfering with the navigation of the waterways and so existing navigable depths will not be impaired except as allowed by permit issued by the U.S. Coast Guard and/or the U.S. Army Corps of Engineers.

- 7.10 BARRICADES AND WARNING SIGNS** - The Contractor shall provide, erect, and maintain necessary barricades, suitable and sufficient lights, danger signals, signs and traffic control devices and take all necessary precautions to protect the work and safety of the public. Highways closed to traffic shall be protected by barricades. Obstructions shall be illuminated during hours of darkness. Warning signs shall be provided to control and direct traffic.

The Contractor shall erect warning signs at locations where operations may interfere with the use of the road by traffic, and at intermediate points where the new work crosses or coincides with an existing road.

As a minimum, barricades, warning signs, lights, temporary signals and other protective devices must conform with the Manual on Uniform Traffic Control Devices for Streets and Highways issued by the United States Department of Transportation, and as shown on the plan.

- 7.11 USE OF EXPLOSIVES** - When the use of explosives is necessary for the prosecution of the work, the Contractor shall not endanger life, property, or the new work. The Contractor shall be responsible for all damage resulting from the use of explosives.

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The Contractor shall comply with all laws and ordinances, as well as with Title 29, Title 30, and Code of Federal Regulations, Part 1926, Safety and Health Regulations for Construction (OSHA), whichever is the most restrictive, in the use, handling, loading, transportation, and storage of explosives and blasting agents.

The Contractor shall notify property owners and public utility companies having structures or facilities in proximity to the site of the work of their intention to use explosives. Such notice shall be given sufficiently in advance to enable them to protect their property from injury.

- 7.12 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE** - The Contractor shall be responsible for the preservation of public and private property and shall not disturb, damage or move land monuments and property marks until the Engineer has witnessed or referenced their location.

The Contractor shall be responsible for all damage or injury to property, resulting from an act, omission, neglect, or misconduct in his manner or method of executing the work, or due to defective work or materials. The Contractor's responsibility will not be released until completion of the project and final acceptance by the Department.

The Contractor shall be responsible for any direct or indirect damage or injury to public or private property resulting from or on account of any act, omission, neglect, or misconduct in the execution of the work, or in consequence of the nonexecution of the work. The Contractor shall restore the property to a condition similar or equal to that existing before such damage or injury occurred by repairing, rebuilding, or restoring and making good such damage or injury as directed by the Engineer and at the expense of the Contractor.

- 7.13 FOREST PROTECTION** - In carrying out work within or adjacent to State or National Forests, the Contractor shall comply with regulations of the State Fire Marshall, Department of Water and Natural Resources, Division of Forestry, or other authority having jurisdiction, governing the protection of forests. Sanitary laws and regulations shall also be observed in the performance of work within or adjacent to forest areas. The Contractor shall keep the areas in an orderly condition, dispose of refuse, obtain permits for the construction and maintenance of construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the requirements and instructions issued by the Forest Supervisor.

The Contractor shall prevent and suppress forest fires and shall require employees and subcontractors, both independently and at the request of Forest officials, to prevent, suppress and to assist in preventing and suppressing forest fires and to immediately notify a forest official of the location and extent of any fire seen.

- 7.14 RESPONSIBILITY FOR DAMAGE CLAIMS** - The Contractor shall indemnify and save harmless the Department, its officers and employees, from all suits, actions, or claims of any character brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of the said Contractor; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in constructing the work; or because of any act or omission, neglect, or misconduct

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of said Contractor; or because of any claims or amounts recovered from any infringements of patent, trademark, or copyright; or from any claims or amounts arising or recovered under the "Workmen's Compensation Act", or any other law, ordinance, order, or decree; and so much of the money due the said Contractor under and by virtue of his contract as may be considered necessary by the Department for such purpose may be retained for the use of the State; or in case no money is due, his surety may be held until such suit or suits, action or actions, claim or claims for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the Department; money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that adequate public liability and property damage insurance is in force.

- 7.15 LIABILITY INSURANCE** - The Contractor shall procure and maintain at the Contractor's own expense, during duration of the Contract, insurance liability for damages imposed by law with insurance companies authorized to do business in the State. The insurance shall cover all operations under the Contract, whether performed by the Contractor or by Subcontractors. Before commencing the work, the Contractor shall furnish certificates of insurance, certifying that the policies will not be changed or cancelled until 30 days written notice has been given to the Department.

The certificates of insurance shall provide evidence that sufficient liability insurance is carried to protect the public from injuries sustained by reason of pursuing the work, and that Worker's Compensation Insurance meets the requirements of the South Dakota Workmen's Compensation Law.

- 7.16 OPENING SECTIONS OF PROJECT TO TRAFFIC** - The provisions of this section shall apply to those projects or portions of projects on which the Contractor is not required to maintain traffic as specified in Section 4.4. The Department may open certain sections of the work to traffic prior to completion or acceptance of the work. Such opening shall not constitute acceptance of the work, or part thereof, or a waiver of provisions of the contract. On such portions of the project as are accepted for use of traffic, the Contractor shall not be responsible for expense entailed in maintaining the roadway for traffic and shall be compensated for the work as provided in Section 9.5. Damage to the highway not attributable to traffic, or unforeseeable causes as set forth in Section 7.17, shall be repaired by and at the Contractor's expense.

If the Contractor is dilatory in completing shoulders, drainage structures, or other features of the work, the Engineer may order all or a portion of the project open to traffic. In such event the Contractor shall not be relieved of liability and responsibility during the period the work is so opened prior to final acceptance. The Contractor shall conduct the remainder of construction operations with a minimum obstruction to traffic.

- 7.17 CONTRACTOR'S RESPONSIBILITY FOR WORK** - Until final written acceptance of the project by the Engineer, the Contractor shall be responsible and shall protect the work against injury or damage from all causes, whether arising from the execution or from the non execution of the work. The Contractor shall rebuild, repair, restore, and replace all work that is injured or damaged prior to final acceptance at no additional cost to the Department. Damage to work

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due to causes beyond the control of and without the fault or negligence of the Contractor, including but not restricted to acts of God, the public enemy or of governmental authorities shall be restored by the Contractor under the provisions of Subsection 4.4 B.1.

During periods that work is suspended for any cause, the Contractor shall be responsible for the project and take precautions as necessary to prevent damage to the project, provide for drainage and shall erect necessary temporary structures, signs, or other facilities required to maintain the project. The Contractor shall properly and continuously maintain in an acceptable growing condition all newly established plantings, seedings, and sod furnished under the contract, and protect new tree growth and other important vegetative growth against injury.

The Contractor shall bear all costs for work performed during periods of work suspension not covered by a written suspension order, or when the work is suspended for the Contractor's failure to comply with the provisions of the Contract, or when work is suspended by option of the Contractor.

7.18 FURNISHING RIGHT-OF-WAY - The Department will be responsible for the securing of necessary rights-of-way in advance of construction. Exceptions will be indicated in the contract.

7.19 PERSONAL LIABILITY OF DEPARTMENT EMPLOYEES - The Department of Transportation, or their authorized representatives are acting solely as agents and representatives of the Department when carrying out and exercising the power or authority granted to them under the Contract. There shall not be any liability on them either personally or as employees of the Department.

7.20 NO WAIVER OF LEGAL RIGHTS - The Department shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefor, from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the contract. The Department shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate and payment in accordance therewith, from recovering from the Contractor or his sureties, or both, such damages as it may sustain by reason of his failure to comply with the terms of the contract. Neither the acceptance of the Department, or any representative of the Department, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Department, shall operate as a waiver of any portion the contract or of any power herein reserved, or of any right to damages. A waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

7.21 COOPERATION WITH ARCHEOLOGICAL RESEARCH CENTER, DEPARTMENT OF EDUCATION AND CULTURAL AFFAIRS, AND STATE HISTORICAL PRESERVATION OFFICER

A. Department Owned or Optioned Areas: The Contractor shall notify the Engineer of any archeological or historical site which the Contractor might discover, and find, locate,

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or become aware of during construction operations. The Contractor shall suspend construction operations at the site or sites for a period not to exceed 72 hours to give the Archeological Research Center and Department of Education and Cultural Affairs an opportunity to observe, investigate and inspect such site or sites.

The Contractor shall aid and assist in any salvage or preservation program as directed within the roadway prism or material sources. Any additional work caused by compliance with requests for assistance will be considered as Extra Work in accordance with provisions of Section 4.3.

- B. Contractor Optioned Aggregate Pits or Borrow Areas:** Clearance must be obtained from the State Historical Preservation Officer (SHPO) before any pit operations can be initiated.

To obtain SHPO clearance, a cultural resource survey may need to be conducted by a qualified archaeologist and the results submitted to the Department. The Contractor shall arrange and pay for this survey.

If the proposed site is located on Indian trust (Allotted) lands a permit must be obtained from the Bureau of Indian Affairs (BIA) before the cultural resource survey can be conducted. This may require the Contractor to obtain written permission from the property owners and the tribe before the BIA will issue the permit.

The Department will not be responsible for costs that are incurred by the Contractor or for delays or other inconveniences encountered in obtaining the BIA permit or SHPO clearance for a Contractor optioned borrow area.

The Department will, when requested, assist the Contractor in contacting the SHPO and in determining if a Cultural Resource Survey has been previously conducted for the location in question.

Clearance, granted by the Department or the SHPO, will not relieve the Contractor of the responsibility of complying with all federal and state laws and regulations which govern the salvage and preservation of any cultural resources that are discovered during execution of the work.

If the Contractor does encounter remains of prehistoric dwelling sites, human burials, or historic or archaeological artifacts at any stage of borrow area or pit operations, the procedures specified in Section 7.21 A. shall be followed except that the Contractor shall be liable for all standby costs, all damages incurred, and all costs associated with the salvage and preservation activities.

- C. Work Activities Outside the Plan Work Limits:** All activities directed by the Department that disturb the soil and are not specifically addressed in the plans shall be reviewed by the appropriate resource agencies. Review by the resource agencies shall be coordinated with the Project Engineer and the Department Environmental Engineer. The

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Contractor is responsible for obtaining archaeological clearance, wetland mitigation, endangered species review, 404 Permit, all other permits and studies required by the environmental review prior to performing any earthwork disturbing activities outside the work limits.

The Contractor is responsible for obtaining a letter of "No Effect" for historical/archaeological sites prior to all activities outside the work limits as specified on the plans. Activities outside the plan work limits will not be authorized until the letter of "No Effect" from the State Historical Preservation Office (SHPO) is received by the Engineer. An archaeological survey and evaluation by the SHPO may take up to six weeks and in certain cases it may take longer to obtain a letter of "No Effect".

Soil disturbing activities outside the plan work limits, such as in streams, stream banks, lakes, lake shores, and wetlands, are prohibited unless the Contractor has obtained a 404 Permit from the U.S. Army Corps of Engineers (COE). It is the Contractor's responsibility to coordinate with the COE for a determination on the need for a 404 Permit. Activities outside the plan work limits will not be authorized until documentation is received by the Engineer that coordination with the COE has occurred.

A wetland is defined as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

- 7.22 ENVIRONMENTAL PROTECTION** - The Contractor shall comply with all Federal, State and local laws and regulations controlling pollution of the environment. The Contractor shall take necessary precautions to prevent pollution of streams, lakes, ponds, and reservoirs from harmful materials and to prevent pollution of the atmosphere.
- 7.23 SOUND CONTROL REQUIREMENTS** - The Contractor shall comply with all local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the contract. All engines, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer and maintained in a satisfactory working condition.
- 7.24 AMERICAN WITH DISABILITIES ACT** - The Contractor, by signing and submitting a bid or proposal, agrees to provide services in compliance with the Americans with Disabilities Act of 1990.