PUC-01

STATE OF SOUTH DAKOTA
SHORT FORM CONSTRUCTION CONTRACT BETWEEN

G&N Construction Inc.
1202 E. Sioux Ave.
Pierre, South Dakota 57501

State of South Dakota
Bureau of Administration

Referred to as Contractor

Referred to as State

PROJECT: **CAPITOL BUILDING**
DDN OFFICE REMODEL
PUBLIC UTILITIES COMMISSION
OSE# ACC11--01X

CONSTRUCTION CONTRACT

THIS CONTRACT made the **16th** day of **June, 2010** is made for the described services with the Contractor for the consideration stated herein:

I. THE SCOPE OF WORK OF THE CONTRACTOR

A. The Contractor shall provide and furnish all of the supervision, plant, labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to perform and complete in a workmanlike manner and ready for operation all the work required for the for the State in strict compliance with the Contractor's Proposal and any other contract documents herein mentioned which are a part of this Contract. **Contractor shall provide general construction work for the DDN Office Remodel in accordance with the Request for Informal Bids issued by the Office of the State Engineer, dated June 30, 2010 and informal bid provided by G&N Construction (attached as Exhibit A). The State's Terms and Conditions as listed in the Request for Informal Bids shall prevail.**

B. CONTRACT DOCUMENTS: The following documents and any other documents incorporated in them by reference constitute the contract documents:

1. This Agreement
2. Request for Informal Bids issued by the Office of the State Engineer, dated June 30, 2010
3. Informal bid provided by G&N Construction (attached as Exhibit A)

These documents constitute the entire and integrated agreement between the parties hereto and supersede prior negotiations, representations, or agreements, either written or oral.

C. TIME FOR COMPLETION - The work under this Contract shall be commenced within ten (10) consecutive calendar days after date of issuance of notice to proceed by the State Engineer, and shall be completed by September 17, 2010, excluding punchlist. The Contract may be extended for whatever term, upon mutual agreement, in writing, of the parties.

II. THE RESPONSIBILITIES OF THE STATE

A. For the performance of the work specified in the Contract Documents, State will pay Contractor and Contractor will accept as full compensation the sum of **$15,854.62**, subject to additions or deductions as provided in the contract documents;

B. Unit Prices, if any, are as follows: **Not Applicable.**

Where the quantities originally contemplated are so changed that application of the agreed unit price to the quantity of work performed is shown to create a hardship to the State or the Contractor, there shall be an equitable adjustment of the Contract to prevent such hardship.

III. CHANGE ORDERS

A. A Change Order is a written order to the Contractor signed by the State, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

B. The State, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

C. The cost or credit to the State resulting from a change in the Work shall be determined in one or more of the following ways:

1. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation and acceptable to the State Engineer for such purposes. Such lump sum proposals shall be supported by a completely detailed analysis of the proposed change subdivided into the Work of the Contractor and/or the Work of each Subcontractor and/or Sub-subcontractors involved in the proposed change, as applicable.

2. By unit prices stated in this Contract or subsequently agreed upon.

D. If none of the methods set forth in Article III C 1 and 2 is agreed upon, the Contractor, provided he receives a written order signed by the State, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the State on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for the Contractor's Fee. In such case, the Contractor shall keep and present, in such form as the State Engineer may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order.

IV. DIFFERING SITE CONDITIONS

A. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the State of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

B. The State shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contract Sum shall be adjusted as provided in Article III, provided that the work has been ordered in writing by the State.

V. DELAYS AND EXTENSIONS OF TIME

A. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the State, or by any separate contractor employed by the State, or by changes ordered in the Work, or by labor disputes not caused by the labor practices of the Contractor, fire, unusual delay in transportation, severe and unusual weather conditions not reasonably anticipatable, unavoidable casualties, or any other causes beyond the Contractor's control and not occurring due to the fault or neglect of the Contractor, any Subcontractor or any other person for whose acts the Contractor is responsible, then the Contract Time shall be extended by Change Order for such reasonable time as the State shall determine.

B. Any claim for extension of time shall be made in writing to the State not more than 10 days after the commencement of the delay; otherwise it shall be waived. In the case of continuing delay only one claim is necessary.

C. Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where work is performed.

D. The Contractor's right to make a claim or claims for an extension of time shall not preclude the Contractor's right to make a claim for delay damages arising out of the State's significant interference, by action or inaction, with the Contractor's Work.

VI. SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, and for safeguarding all adjacent properties and facilities.

VII. OWNERSHIP, USE OF DOCUMENTS, CONFIDENTIALITY OF DOCUMENTS

A. Any plans, specifications, engineering calculations, technical data, reports, miscellaneous drawings, and all information contained therein provided by the State, its consultants, employees, contractors and agents to the Contractor for the Contractor's performance of its obligations under this agreement are the property of the State. They are to be used only with respect to this Project and are not to be used for any other project. The Contractor may not disseminate these materials to any person or entity nor may the Contractor use these materials for purposes other than work for the State, without the express written approval of the State. The State shall not unreasonably withhold such approval for dissemination of these materials as necessary to subcontractors and suppliers.

B. All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided to or prepared by the Contractor, its owners, officers, employees, agents, consultants, suppliers, and sub-contractors in connection with the Contractor's performance under this Agreement are confidential and the Contractor, its owners, officers, employees, agents, consultants, suppliers, and subcontractors shall not disclose this information to any person, individual, or entity without the express written permission of the State.

C. All documents covered by this Article shall be delivered to the Architect/Engineer at the completion of the work. The Contractor may not retain any such documents for its own use without the express written permission of the State and any documents that are retained, with or without State permission, shall be subject to all of the requirements of this Article.

D. The Contractor shall include the requirements of this Article in any contract it enters into with any consultants, subcontractors, suppliers, persons, individuals, or entities for the performance of any of the Contractor's obligations under this agreement.

VIII. PAYMENT

A. Progress Payments: Subject to the provisions of South Dakota Codified Law, the State shall make progress payments on a monthly basis for work accomplished in accordance with this Contract.

B. Final Payment: Subject to the provisions of South Dakota Codified Law, Final payment less amounts withheld to cover the cost of nonconforming work, shall be made by the State within thirty days after the completion and acceptance of the public improvement by the State.

Upon receipt of written notice from the Contractor that the work is ready for final inspection and acceptance, the State Engineer or by the State Engineer's authorized representative or both shall make such inspection with representatives of the Contractors and the State, and when it is found that the work is acceptable under the Contract and the Contract is fully performed as evidenced by inspection, the State Engineer and the State shall promptly approve the voucher for payment.

The Contractor shall submit evidence satisfactory to the State Engineer that all claims of unpaid payrolls, material bills and other indebtedness connected with the work have been satisfied, prior to approval of the final payment.

IX. INDEPENDENT CONTRACTOR

Contractor agrees that in the performance of this Contract, it and its agents, employees and consultants are acting as an independent contractor and not as employees, agents or officers of the State of South Dakota. As such, Contractor agrees not to use State equipment, supplies, and facilities unless otherwise agreed to.

X. INDEMNITY

Contractor agrees to hold harmless and indemnify the State of South Dakota, its officers and employees from and against any and all actions, suits, damages, liability or other proceedings which may arise as a result of the negligence, misconduct, error or omission of any officer, agent, consultant or employee of Contractor. This section does not require the Contractor to indemnify the State, its officers, agents or employees from claims or liability arising solely from the acts or omissions of the State, its officers, agents or employees.

XI. INSURANCE

During the term of this Agreement, the Contractor shall maintain in effect at all times, and provide proof of such coverage to the State, insurance coverage for this Project at the limits set forth herein:

Type of Coverage	Limits
Workers Compensation and Employers Liability	Statutory
Commercial General Liability, including Property Damage (per occurrence)	$1,000,000
Business Automobile Liability (per occurrence)	$1,000,000

1. The Contractor shall submit insurance policies to the State Engineer for review and approval when requested.

2. If Commercial General Liability insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

XII. AMENDMENT PROVISION

This Contract may only be amended with written consent of both parties or as otherwise provided in this contract.

XIII. TERMINATION FOR CONVENIENCE

A. Lack of Legislative Authority: This Contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Contract will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State. Termination for this cause shall be treated in the manner set forth in paragraph B of this article.

B. The State may terminate this Contract at any time without cause, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease Work and remove from the project site all of its labor forces and such of its materials as the State elects not to purchase or to assume in the manner hereinafter provided. The Contractor shall receive as full compensation for termination and assignment the following:

(1) All amounts then otherwise due under the terms of this Contract,

(2) Amounts due for work performed subsequent to the latest Request for Payment through the date of termination,

(3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, the State shall have no further obligations to Contractor of any nature.

XIV. TERMINATION FOR DEFAULT

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

XV. DISPUTES

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

B. Claims for Damages: Should either party to the Contract suffer injury or damage because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within 14 days after the first observance of such injury or damage.

C. All claims, counter-claims, disputes or other matters in question between the State and the Contractor arising out of, or relating to this Contract, or the breach thereof, will be decided by a court of competent jurisdiction within the State of South Dakota.

D. The Contractor shall carry on the Work and maintain its progress during any dispute or litigation proceedings, and the State shall continue to make payments to the Contractor to the extent required by the Contract Documents and South Dakota Law.

XII. NOTICE:

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

1) **If to Contractor:**
Nick Osterkamp, G&N Construction
1202 E. Sioux Ave.
Pierre, South Dakota 57501
Phone: 605.224.8390 Fax: 605.945.2806

2) **If to State:**
Rich Ivey, P.E., Office of the State Engineer
523 East Capitol
Pierre, South Dakota 57501-3182
Phone: 605.773.6512 Fax: 605.773.5980

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

In witness hereto the parties signify their agreement by signatures affixed below on the day and year above first written.

CONTRACTOR: G&N CONSTRUCTION INC.
1202 E. SIOUX AVE.
PIERRE, SOUTH DAKOTA 57501

By Nick Osterkamp

Title: CEO/AGENT

Fed. Emp. Tax ID#: 46-0444632

STATE OF SOUTH DAKOTA

Chair (PUC)

PATRICIA VAN GERPEN
Executive Director
PUBLIC UTILITIES COMMISSION

ATTEST:

JEFF BLOOMBERG
Commissioner
BUREAU OF ADMINISTRATION