ONE CALL CONTRACT
PUC-11-003

SOUTH DAKOTA ONE-CALL NOTIFICATION CENTER CONTRACT

This Contract is entered into this 27th day of August, 2010, between the One-Call Notification Board (Board), a South Dakota state agency, whose address is 500 East Capitol Avenue, Pierre, South Dakota, 57501 and KorTerra, Inc., whose address is 18882 Lake Drive East, Chanhassen, MN 55317 (Contractor). The terms and conditions of the Contract are as follows:

1. **DEFINITIONS.** In addition to the terms defined in SDCL 49-7A-1, which are incorporated herein by reference, terms used in the Contract Documents are defined as follows:

   "Contract Documents" consist of the South Dakota One-Call Center Notification Contract; Exhibit A to the Contract – Required Procedures for the Operation of the South Dakota Center; Exhibit B to the Contract – Price Agreement for the Operation of the South Dakota One Call Center; SDCL Chapter 49-7A; ARSD Article 20:25; and any amendments to these documents or documents entered into after execution of the Contract.

   "Contract" means the South Dakota One-Call Notification Center Contract entered into between the Board and the Contractor and all other items incorporated therein.

   "Center" means the South Dakota One-Call Notification Center and its employees

   "Facility Operator" means any individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture, or corporation, and includes the employer of an individual who operates an underground facility.

   "Work" means all of the supervision, labor, materials, equipment, transportation, facilities and services necessary to install, maintain and operate the Center in accordance with Contract Documents.

   "Specifications" mean the One-Call Center Specifications, which establish the requirements for the Center, including materials, equipment, System, standards and workmanship for the Work and performance of related services.

   "System" means the software and hardware needed to operate the Center.

2. **SCOPE OF WORK.** The Contractor agrees to furnish the necessary facilities, labor, supervision, office equipment, supplies, System and office services to staff, operate and maintain the Center consistent with the Specifications, incorporated herein by reference, which will serve the State of South Dakota (State). All services shall be rendered within the time frame and guidelines

set by SDCL Chapter 49-7A, ARSD Article 20:25, which are incorporated herein by reference and Exhibit A of this contract.

The Contractor shall meet with the Board when requested for regular or special Board meetings. Meeting by teleconference is acceptable if previously approved by the Board or its designated representative. Costs associated with attendance at these meetings are the responsibility of the Contractor.

The Contractor shall provide the Board with such information and reports as are required by the Board to monitor the Center's Work.

3. **COMMENCEMENT AND COMPLETION OF WORK.** Services under this Contract shall commence on August 30, 2010 and end on September 30, 2010, unless sooner terminated pursuant to the terms hereof. The Work shall continue twenty-four hours a day, seven days a week without interruption. The Contract shall become effective upon execution.

4. Contractor shall not use State equipment, supplies or facilities. Contractor's Employer Identification Number is

5. **CONTRACT PERIOD, CONTRACT MODIFICATIONS AND/OR AMENDMENTS.** The Contract shall be for a one month period unless otherwise terminated.

   The Contract may be modified or amended by mutual agreement of the Contractor and the Board. Any modification or amendment of the Contract Documents or the Specifications shall be in writing signed by the Board and the Contractor.

6. **RECEIPT OF FEES AND PAYMENTS TO CONTRACTOR.** The Contractor shall bill Facility Operators for services rendered and shall collect and deposit such funds in an account designated by the Board. At no time are the funds collected and deposited in the Board account considered Contractor funds. Contractor is merely acting on behalf of the Board regarding collection of said amount.

   The Board will make monthly payment to Contractor for work performed within twenty days after receipt of an invoice from Contractor of the month's Center fee consistent with the Contractor bid. See Exhibit B for more details.

7. **FUNDING OUT CLAUSE.** The Contractor agrees the continuation of the Contractual provisions contained herein is dependent upon receipt of both funding and the expenditure authority of the South Dakota Legislature. In the event the Legislature does not provide said funds or expenditure authority for any fiscal year, then in such event, this Contract will be null and void and shall expire at the end of the fiscal year in which the last funding shall be made available to the Board. The Contractor agrees termination because of lack of funds or expenditure authority will not result in a claim

against the Board, the State of South Dakota, or any officer or employee of the Board or the State.

8. **STATUS OF CONTRACTOR.** The Contractor shall undertake the Work as an independent Contractor, at its sole risk, and shall employ all persons performing Work under the Contract, such persons to be its sole employees or agents and subject to its direction and control, and not the agents or employees of the Board. The Contractor is to determine the manner and method by which the Work shall be performed to attain conformance required by the Contract Documents. The Board shall have the option to terminate the Contract shall the status of the Contractor change. The Contractor shall provide the Board a minimum of 90 days notice prior to initiating a change in status. This means, should the Contractor materially change, sell or alter its business structure, the Board has ninety (90) days from the receipt of the notification to conduct a review of the situation and provide notice of acceptance of the change in status or provide notice of the termination of the Contract.

9. **INDEMNITY.** Contractor, its assignees, or subcontractors agree to indemnify and hold harmless the Board and the State of South Dakota and their officers, agents, employees, members, successors, and assigns (collectively, the "SD Indemnities"), from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing the Work hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the Board, the State, or their officers, agents or employees. For purposes of this Section, any injury, death, property damage or loss of any nature sustained on the Work site shall be deemed conclusively to have arisen out of the performance of the Work by the Contractor. Board and Contractor agree that, other than the SD Indemnities, no person or entity is intended as a beneficiary of this Section.

   If any legal action or suit is instituted by any person or entity against the Board, the State, or their officers, agents, employees, members, successors, or assigns, as a result of the Contractor's performance of the Work herein, the Contractor will assume the defense of that legal action or suit, upon being notified to do so by the Board, and will pay any judgment rendered in such legal action or suit that was rendered as a direct result of the action or inaction of the Contractor. It is understood and agreed by the Contractor that if the Board or the State or their officers, agents, employees, members, successors, or assigns are named a defendant in any legal action or suit which is brought as a result of the Contractor's performance of the Work herein and the Contractor fails or neglects to assume the defense thereof after having been notified to do so, the Board or the State may compromise and settle or defend the legal action or suit and the Contractor is bound to reimburse the Board or the State for the amount expended by the Board or the State in paying any judgment or settlement, together with all reasonable attorney's fees or other costs of litigation incurred by the Board or the State

by reason of its defense or settlement of such legal action or suit. Any judgment or amount expended by the Board or the State in compromising or settling such legal action or suit shall be conclusive as determining the amount for which the Contractor is liable to reimburse the Board or the State.

10. **ASSIGNMENT OR SUBLETTING**. Except for the subcontract with Texas Excavation and Safety Systems (TESS), Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. Both parties agree that TESS shall be responsible for all call center functions including but not limited to ticket processing, data base entry and map updating. Approval of any assignee or subcontractor will not be given unless satisfactory evidence has been furnished to the Board that such entity is qualified to perform the work specified and that the proposed entity is carrying ample workers' compensation, public liability, contingent liability, property damage, and all other insurance to the same extent and in the same manner as is herein provided to be furnished by the Contractor. Such approval, if given, shall not relieve the Contractor from full responsibility for the work or the fulfillment of all the Contractor's obligations under the Contract. Upon the termination of any subcontract, the Board shall be notified immediately.

11. **DISTRIBUTION OF INFORMATION PROVIDED TO THE CONTRACTOR.** Except as set forth herein, the Contractor may not sell or distribute any information provided by the Board, by a Facility Operator, or by an excavator to a third party without written agreement of the Board.

12. **PUBLIC REGULATIONS, PERMITS AND LAWS.** All necessary permits, licenses or similar authorizations from governmental authorities or private persons required for the actual performance of the Work shall be obtained by the Contractor, at its own expense, in the name of the Contractor. The Contractor shall give all required notices and shall comply with all applicable laws, ordinances, building codes and regulations of any public authority having jurisdiction. The Contractor shall pay all fines, expenses, and other charges that may result from the performance of the Work. If the Contractor discovers that any part of the Specifications forming a part of the Contract is at variance with legal requirements, Contractor shall promptly notify the Board in writing. If the Contractor performs any Work which is contrary to any laws, ordinances or regulations, he shall bear all costs and penalties arising therefrom.

13. **UNEMPLOYMENT AND WORKERS' COMPENSATION.** The Contractor shall comply with all unemployment insurance and workers' compensation laws and shall procure employers' liability insurance consistent with the laws of the state in which the Work is performed. Further, the Contractor shall save the Board harmless from any claims or causes of action arising because of his noncompliance or alleged noncompliance with this section. If the Contractor does not comply with the applicable unemployment or workers'

compensation laws, and the Board is required on demand to make payments to the state authority having jurisdiction over state unemployment or workers' compensation benefits for the Contractor's employees because of this Contract, the Contractor shall reimburse the Board to the extent of the Board's payments. The Board may, in its discretion, deduct any such payments and any expenses incidental thereto from the Contract payments required herein.

14. **EQUAL OPPORTUNITY AND EMPLOYMENT.** The Contractor shall determine the applicability of, and assure compliance with, all relevant federal, state and local statutes, rules, regulations, orders, ordinances, and other laws governing employment or the provision of services, whether public or private, including but not limited to, all statutes, rules, regulations, orders, ordinances, and other laws governing affirmative action, discrimination, minority set-asides, minimum wages, maximum hours, prevailing wages, wage payments, wage deductions, occupational safety, workers' compensation, unemployment compensation and insurance continuation.

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, handicap or national origin.

Pursuant to the Vietnam Veterans Readjustment Act of 1974 (41 C.F.R. 60-250), the Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veteran status in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Pursuant to Section 503 of the Rehabilitation Act of 1973 (41 C.F.R. 741), the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Contractor agrees to perform the Work in compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and any other state or federal employment acts that may apply to the performance of the Work or this Contract.

The Contractor will include the provisions of this section in every subcontract, unless certain provisions herein are exempt by rules, regulations or orders, and this section will be binding upon each subcontractor.

15. **INSURANCE.** The Contractor shall obtain and require subcontractors to obtain insurance of the types and in the amounts described below and satisfactory to the Board.

A. Commercial General Liability Insurance with Limits of $2,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit.

Such insurance shall:

1. Start effective the first day of services provided hereunder.

2. Be primary with respect to other insurance or self-insurance that covers the insureds in 1, A (above)

3. Contain a limited pollution exclusion. "Limited pollution exclusion" is here defined as one defined as one that does not apply to non-owned sites unless the site is occupied by the insured or used by or on behalf of the insured for waste disposal, storage or treatment, or pollution has been brought to a construction site by or on behalf of the insured.

B. Workers' Compensation Insurance with Statutory Limits and meeting the Laws of the state where Contractor performs work.

C. Umbrella Liability in the amount of $1,000,000 in excess of the underlying Comprehensive General Liability

D. Employer's Liability Insurance with Limits of one hundred thousand dollars each Accident.

E. Automobile Liability Insurance Covering All Owned, Non-Owned and Hired Automobiles. Such insurance shall afford limits not less than one million dollars each accident.

F. Errors and Omissions Liability Covering the Contractor's Operations. Such insurance shall provide a limit of not less than one million dollars per claim and aggregate, and, if provided on a claims-made policy form, shall include a retroactive date starting on the Contractor's first date of service to the Board or earlier, and remain in force at least one year after the end of the Contractor's services.

G. In conjunction with securing the above insurance, the Contractor shall secure:

1. Notice of Cancellation. All policies of insurance the Contractor is required to secure and maintain under the terms of this Contract shall be endorsed to provide written notice to the Board at least thirty days prior to the effective date of any cancellation of such policies.

2. Evidence of Insurance. Prior to the date on which Contractor or any subcontractor commences operations, the Contractor shall cause to be furnished to the Board certificates of insurance maintained by the Contractor to comply with the requirements set forth in this section. If requested by the Board, certified copies of such insurance policies or renewals or replacements thereof shall be submitted to the Board within thirty days of such request.

3. Insurer Stability. Insurance shall be placed with insurers authorized to do business in South Dakota and acceptable to the Board.

16. **TERMINATION -** This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Contractor breaches any of the terms or conditions hereof, this Agreement may be terminated by the Board at any time with or without notice. Upon Notice to Contractor, however, the Board may allow the Contractor to cure a breach of contract. Such opportunity to cure is, at the sole discretion of the Board and within the terms as stated by the Board. If termination for such a default is effected by the Board, any payments due to Contractor at the time of termination may be adjusted to cover any additional costs to the Board because of Contractor's default. Upon termination the Board may take over the work and may award another party an agreement to complete the work under this Agreement. If after the Board terminates for a default by Contractor it is determined that Contractor was not at fault, then the Contractor shall be

paid for eligible services rendered and expenses incurred up to the date of termination.

When a breach of the Contract Documents exists, the Board may without prejudice to any other rights or remedies of the Board, terminate the Contract and employment of the Contractor and may require the Contractor to:

A. Finish the Work up to a termination date as specified by the Board;

B. Within three business days following the notice of termination, the Contractor will provide the Board with the statewide street level mapping data and the geographic depiction of each Facility Operator's underground facilities using the current GIS grid system in place at the time of notice both in text and Latitude/Longitude formats. Additionally the Contractor will provide the current street level database in use by the Center as updated periodically by the Contractor and Facility Operators. Data will be in standard mapping format using media such as tapes, disks, or other such media in the standard format the Board may specify;

C. Transfer to the Board all documentation the Contractor shall have been required to maintain as of the date of termination under the provisions of this Contract;

D. Relinquish any and all rights to the published one-call telephone numbers and other such documents and information pertaining to the Center, as the Contractor shall possess and the Board shall reasonably request;

E. If the Contractor has not fully performed the Work as required in the Contract Documents, or as specified after breach by the Board, the Board may hire another entity to finish the Work and hold the Contractor liable for (1) any costs of substitute performance in excess of those the Board would have had to pay to Contractor in the absence of such breach or (2) any incidental costs related thereto. Termination of this Contract by either party for any reason whatsoever, shall not affect any obligation with respect to Work performed prior to such termination, or the indemnity or insurance provision contained herein.

17. **TERMINATION BY FORCE MAJEURE.** Should performance of the Work be rendered impossible or illegal by causes beyond the reasonable control of the parties, including but not limited to, acts of nature, acts of God, war, riot or action or inaction of any governmental agency or court having or claiming jurisdiction, the Board may serve written notice upon the Contractor of the Board's intention to terminate the Contract. If the Board terminates the Contract for any of these reasons, the Contractor shall be paid its total accrued costs, including reasonable overhead costs incurred to the date of termination, plus a reasonable profit, all of which are to be negotiated between the parties.

18. **RETENTION OF CONTRACTOR'S RECORDS.** The Contractor shall retain all records relating to direct expenses reimbursed to the Contractor and hours of employment on this Contract by any employee of the Contractor for which the Board is billed. Such records shall be maintained for a period of three years after termination of this Contract and shall be available for inspection at any reasonable time by personnel authorized by the State of South Dakota.

19. **DISCLOSURE AND CONFIDENTIALITY.** All information and other data in any way associated with the Work rendered by the Contractor under the terms of this Contract is and shall remain the proprietary property of the members or the Board and shall not be used by the Contractor or furnished or disclosed to any person, entity or governmental agency, except the department of Legislative Audit, in any way not covered by the Contract Documents without prior written consent of the Board. During the term of the Contract, the Contractor shall not perform any service covered by the Contract Documents for any party not governed by SDCL Chapter 49-7A without the prior written consent of the Board.

20. **COMPLIANCE WITH CHANGES IN FEDERAL OR STATE LAW.** The Contractor shall negotiate in good faith with the Board to include all provisions of Federal One-Call legislation or any other state or federal legislation or rules that may be passed during the term of the Contract to insure that the Center will be in compliance with any such changes. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof

21. **CHANGE IN SCOPE OF SERVICES.** If the scope of services under this Contract is modified to require additional Work not herein contemplated and such modification is approved by the parties herein prior to performance and a written amendment to this Contract is drawn identifying the approved changes, an authorization of additional funds may be made by the Board.

22. **ALTERATION AND ORAL AGREEMENTS.** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein may be binding on any of the parties hereto. The terms and conditions herein may only be altered by formal written amendment of this Contract.

23. **WAIVER.** No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided by law. The failure of the Board to enforce, at any time, any of the provisions of the Contract shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of the

Contract or any part thereof, or the right of the Board to hereinafter enforce each and every such provision.

24. **TIME OF ESSENCE.** Time is of the essence in this Contract. In the event the Contractor shall fail to perform the agreements on its part at the time fixed for performance of such respective agreements by the terms of this Contract or by any extension, the Board may, at its election, terminate the Contract. Such termination shall be in addition to, and not in lieu of, any other legal remedies provided by this Contract or by law.

25. **PAYMENTS INCLUDE ALL TAXES.** Payments to be made to the Contractor, as specified herein, shall include all taxes of any description, federal, state and municipal assessed against the Contractor by reason of this Contract.

26. **SOUTH DAKOTA LAW CONTROLLING.** It is expressly understood and agreed that this Contract shall be governed by the laws of the State of South Dakota, both as to interpretation and performance. Otherwise, unless specified herein, no documents or communications passing between the parties hereto shall be deemed a part of this Contract.

27. **JURISDICTION AND VENUE.** Jurisdiction and venue for all disputes or legal actions of any kind between the Contractor and the Board shall be venued in Hughes County, South Dakota.

28. **AUTHORIZED REPRESENTATIVES.** The following are the representatives of each party to this Contract to whom all correspondence or notices required by this Contract shall be sent to:

Larry Janes
Executive Director
South Dakota One-Call Notification Board
Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501-5070

Chris Stendal
President
KorTerra, Inc.
18882 Lake Drive East
Chanhassen, MN 55317

_____
Bleau LaFave
Chairman of the Board
South Dakota One-Call Notification Board

_____
Chris Stendal
President
KorTerra, Inc.

EXHIBIT A
SOUTH DAKOTA ONE-CALL NOTIFICATION BOARD
REQUIRED PROCEDURES FOR THE OPERATION
OF THE
SOUTH DAKOTA CENTER

I. DEFINITIONS

In addition to the terms defined in SDCL Chapter 49-7A and Administrative Rules Article 20:25, which are incorporated herein by reference, terms used in the Contract Documents are defined as follows:

A. "Board" means the One-Call Notification Board.

B. "Contractor" means the person, corporation, or entity with whom the Contract to operate the Center is made with the Board or its employees, assignees or subcontractors.

C. "Contract" means the South Dakota One Call Center Contract entered into between the Board and the Contractor, and all other items incorporated therein.

D. "Center" means the Center which provides the one call service for South Dakota.

E. "Center Manager" means the manager of the Center.

F. "Facility Operator" means any individual, partnership, limited liability company, association, municipality, state, county, political subdivision, utility, joint venture or corporation, and includes the employer of an individual who operates an underground facility.

G. "Work" means all of the supervision, labor, materials, equipment, transportation, facilities and services as may be necessary to install, maintain and operate the Center in accordance with the Contract Documents.

H. "Specifications" mean the Center Specifications, which establish the requirements for the Center, including materials, equipment, Systems, standards and workmanship for the work and performance of related services.

I. "System" means the software and hardware to operate the Center.

II. SYSTEM SPECIFICATIONS

A. General

1. Ticket Volume: The System shall be capable of receiving a minimum of twenty thousand locate requests per month and transmitting a minimum of one hundred thousand notices per month.

2. Facility Operators: The System shall be capable of handling data from at least four hundred fifty Facility Operators with over six hundred CDC

codes (for Facility Operators to identify their underground facility locations.)

3. Excavators: The System shall be capable of receiving notification from approximately twenty-five thousand different excavators each year.

4. Growth: The System is expected to continue to grow at an annual rate of three to ten percent from the above stated numbers. The System shall allow for easy and rapid growth.

B. System Memory-

1. The System shall have the capability to store address information for a minimum of six hundred Facility Operators. This information includes Facility Operator name, address, phone number, emergency phone number, principal contact and a minimum of one hundred forty-character remarks field.

2. The System shall have the capability to receive Facility Operator underground facility database information in the following formats:

   a. Database Information provided in one fifth and one tenth minute grids
   b. Database Information provided in TRSQ
   c. Database Information provided in line buffering format with minimum buffer zone and buffer zone increments established by the Board.
   d. Database Information provided in polygon drawn design

3. The System shall have the ability to import and store graphic and attribute data from standard mapping and GIS software packages, provided by the Board, capable of assisting excavators and Facility Operators with advanced located query analysis. Mapping data will at a minimum include municipal and/or rural address information, subdivision boundaries, federal and state highway mile marker information.

4. The System shall have the capability to store information for a minimum of twenty-five thousand different excavators. The information to be stored includes point of contact, excavator name, address, phone number, ID number, type of business, and a minimum of a one hundred forty-character field.

5. The System shall have the capability to store information for a minimum of one thousand receivers. This information is used to direct location requests to the Facility Operators.

6. The System shall have the capability to store on line all locate requests that are within the time frame allowed for the update and/or modification of the original notice. All inactive locate request information shall be stored for a period of seven years.

Contract or any part thereof, or the right of the Board to hereinafter enforce each and every such provision.

24. **TIME OF ESSENCE.** Time is of the essence in this Contract. In the event the Contractor shall fail to perform the agreements on its part at the time fixed for performance of such respective agreements by the terms of this Contract or by any extension, the Board may, at its election, terminate the Contract. Such termination shall be in addition to, and not in lieu of, any other legal remedies provided by this Contract or by law.

25. **PAYMENTS INCLUDE ALL TAXES.** Payments to be made to the Contractor, as specified herein, shall include all taxes of any description, federal, state and municipal assessed against the Contractor by reason of this Contract.

26. **SOUTH DAKOTA LAW CONTROLLING.** It is expressly understood and agreed that this Contract shall be governed by the laws of the State of South Dakota, both as to interpretation and performance. Otherwise, unless specified herein, no documents or communications passing between the parties hereto shall be deemed a part of this Contract.

27. **JURISDICTION AND VENUE.** Jurisdiction and venue for all disputes or legal actions of any kind between the Contractor and the Board shall be venued in Hughes County, South Dakota.

28. **AUTHORIZED REPRESENTATIVES.** The following are the representatives of each party to this Contract to whom all correspondence or notices required by this Contract shall be sent to:

Larry Janes
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Bleau LaFave
Chairman of the Board
South Dakota One-Call Notification Board

Chris Stendal
President
KorTerra, Inc.
18882 Lake Drive East
Chanhassen, MN 55317

Chris Stendal
President
KorTerra, Inc.

7. The System shall have the capability to periodically archive location request information to permanent storage. The Board reserves the option to have the information exported to a separate server on a monthly basis.

8. The System shall have the capability to allow a user search of archived data for the previous seven years. The archived data shall consist of a copy of the ticket transmission for all locate requests during this period and visual representation of the identified excavation site for all currently valid locate requests.

9. The System shall have the capability to conduct special requested searches of archived data of tickets issued during the preceding seven years. The Center shall provide a response within ten working days to a request for retrieval of archived information for up to twenty-five tickets identified by a serial number. The response interval for a request for archived information of greater than twenty-five tickets or for a retrieval request requiring a search for a ticket(s) based on data other than an identified serial number shall be negotiated with the requester to establish a mutually agreeable retrieval period.

10. The Center shall have the capability to receive location requests utilizing the following methods.

    a. Incoming toll free telephone line

    b. Electronic entry that maintains comparable ticket quality to a Customer Service Representative assisted entry.

11. The Contractor shall develop and present a record retention program to the Board, which meets the Board's approval, capable of retaining Center records (including but not limited to all locate requests, a list of all excavators, a list of all Facility Operators, and all billing records) for a period of seven years. At the end of the seven-year period or at the end of this Contract, whichever comes first, these records shall be provided to the Board or its designee at no additional cost.

C. Notice of Specifications

1. South Dakota Statute, Administrative Rules and Board policies shall establish the minimum information that must be contained on the notification transmitted to Facility Operators.

2. The System must assign a unique sequential number for each notice generated.

3. The ticket format shall identify in the type field the classification of notices that may be required by South Dakota Statute and Administrative Rules, or established by policies approved by the Board.

4. The normal format of the notice shall be such that the information will fit on a standard 8 ½ x 11 inch sheet of printer paper. The Board and/or its representative shall approve any change to the ticket format.

D. System Specifications

1. The System shall have the capability to transmit a narrative message to all or selected receivers. The System should be capable of transmitting messages by any of the following methods:

   a. Voice
   b. Facsimile
   c. Computer or Printer
   d. Email

2. The System shall notify the customer service representative in the Center if a receiver or receivers are experiencing trouble and not successfully receiving transmissions. The customer service representative shall notify the affected Facility Operator of the transmission problem via voice communication. Additionally, at the end of each working day, the System shall automatically generate and send a receiver summary to each output receiver. This summary shall contain the following:

   a. A listing of each notice by System and receiver identification number sent to that receiver for the day.

   b. The total number of notices, by type and ticket number entered into the System for the receiver for the day.

   c. If no notices are received by a Facility Operator, if requested, they may receive a positive report for the day.

3. The System shall allow the customer service representative the following input capabilities:

   a. On-line capability to update the excavator database with new excavators

   b. The capability to retain the excavator information from one location request screen to the next location request screen.

   c. The capability of retrieving any notice, previously entered into the System, which is within the time frame allowed for the update and/or modification of the original notice.

4. Notices shall be processed for transmission immediately on entry into the System. The transmission shall be in accordance with the following rules:

   a. Emergency notices sent to an electronic receiver (fax, email, printer, computer, or other electronic device) shall be transmitted immediately and, when requested by the Facility Operator,

personal contact via telephone shall be completed to notify the Facility Operator that the emergency notice has been transmitted. Telephone confirmation of emergency notices as defined in SDCL 49-7A-1 shall be completed within thirty minutes or less from the completion of the locate request.

The telephone contact shall be included in the price of the incoming notification.

b. Notices sent to an electronic receiver (fax, email, printer, computer or other electronic device) shall be queued for transmission on first come first served basis.

c. Transmission sent to an electronic receiver (fax, email, printer, computer or electronic device) shall occur within thirty minutes or less or if a certain number of notices are waiting in the queue.

d. Voice transmission to a Facility Operator provided telephone number shall be initiated within sixty minutes or less from the completion of the locate request. The voice transmission may be completed either via telephone call or through the utilization of an automated voice response system.

i. If transmission is made via telephone call, when the initial attempt to provide the information is unsuccessful due to lack of response from the Facility Operator, two additional attempts shall be made within twenty-four hours from completion of the locate requests.

ii. If transmission is completed through an automated voice response system a record must be maintained to indicate attempts to contact Facility Operator and whether Facility Operator acknowledges receipt of the contact.

c. The notices shall be transmitted to those Facility Operators identified in the "Notified Utilities" data field.

d. All notices shall be retained in an on-line or archived status for a period of seven years.

5. The System shall alert the customer service representatives as to which notices need to be called to Facility Operators. The System shall keep a daily log of those notices awaiting voice notification.

6. The System shall allow Facility Operators to update their databases through the addition of new data, deletion of existing data, and/or modification of existing data using a web-based system. These updates should be completed within three working days after the confirmed

updates are received at the Center. All other updates should be completed within five working days after the confirmed updates are received at the Center. Confirmation of completion of the update activity is to be returned to the specific Facility Operator within twenty-four hours after completion of the update. The Board shall approve the format for Facility Operators to transmit the information to the Center.

7. The System shall be capable of maintaining an alphabetical listing of Facility Operators and excavator names and addresses which can be distinguished by monthly and annual locate request or ticket volumes. This listing shall be available for Board reference and capable of being used for the production of address labels for mailing purposes.

8. The System shall have the following minimum monitoring capabilities:

   a. Query the total number of notices queued for transmission for a specific receiver.

   b. Query the total number of notices transmitted thus far for the day for a specific receiver.

   c. Query receivers and circuits for their status.

   d. Test for successful transmission to a specific receiver.

   e. Print all data displayed to a terminal.

E. Reports

1. The System shall provide a variety of statistical and administrative reports. When requested by the Board, the Contractor shall provide a list of all reports included in the System, a statement as to the purpose of each, a brief description of each, and a sample of each.

2. The minimum requirements for the above reports shall include:

   a. An end of the day report providing a daily activity summary for the Center and for each receiver, including a list of ticket numbers distributed throughout the day.

   b. Monthly summaries for both the Center and each receiver.

   c. The capability to generate ad hoc reports such as by number of locates by address and/or by location etc.

3. Statistical reports of call activity shall be maintained and made available to the Board on request to include but not limited to:

   a. Reports that identify Center performance levels as required in Section II. G Performance Requirements.

b. Call volume and breakdown by method of excavator input, i.e. telephone and each type of electronic process.

c. A hard copy audit trail for all notices transmitted.

d. System downtime report

F. System Reliability

1. Due to the critical nature of the service provided by the Center, it is mandatory that the hardware/software systems be highly reliable. A documented disaster recovery plan shall be submitted to the Board prior to the commencement of this contract which outlines a predetermined course of preventive action(s) that, in a case of a system failure, will both minimize the down time and loss of data. The means available to achieve reliability include, but are not limited to: hardware design, redundancy of key components (disk drives, central processing units, etc), distributed processing, maintenance concept, and system operating procedures.

2. The Center shall have an arrangement with another answering facility that provides the following:

   a. Communications – Telephone calls and electronic requests shall be automatically routed to the secondary center to maintain service levels during peak volume periods or in the case of a system failure at the primary Center location.

   b. Software and Hardware – The alternate center shall have compatible hardware with the primary center.

   c. Database – The alternate center shall have a current South Dakota database identical to the primary center and has the ability to update database information should a failure occur at the primary center.

   d. Staffing – A portion of the alternate centers staff shall be cross-trained and familiar with answering South Dakota locate requests. A minimum of ten percent of South Dakota calls should be answered at the secondary center on a monthly basis.

3. To help ensure System reliability, the System must, as a minimum, incorporate the following:

   a. Maintain ninety eight percent system up time per month

   b. The loss of individual components of the System such as printers, receivers, input terminals and system error edit programs must not affect the system operations.

   c. The capability to back up and restore data daily.

d. Easy recovery procedures and continued processing from System down time without data loss.
e. Safeguards to avoid lost audit trail or report information.

G. Performance Requirements

The Contractor shall maintain Center operations in a time responsive manner for receiving excavation requests and distributing locate notices. The Contractor shall specify provisions for monitoring such responsiveness based on the number of incoming and outgoing communication lines, and the following measures of effectiveness.

1. Contractor shall acquire and maintain a sufficient number of incoming telephone lines, at its expense, to ensure that ninety nine per cent of calls do not encounter a busy signal. Upon request, a monthly percent busy report shall be provided to the Board.

2. Contractor shall provide a report on all System down time for direct electronic entry on locate requests and on all System down time for database updates or modification from web entry.

3. Contractor shall have calls answered by an automated answering system that will have a prerecorded message and provide for sequential response by a Facility Operator. The prerecorded message for automated answering shall be approved by the Board and subject to change at the sole discretion of the Board. The average answer time for callers (time from recorded message until attendant answers) shall not exceed an average of 45 seconds per call for any month. At the discretion of the Board, a 15 percent reduction of payments will be made for any month the average full day speed of service requirement exceeds 45 seconds per call.

4. Contractor will also measure the percent of calls on hold greater than 60 seconds. This measure will include calls answered after a hold time greater than 60 seconds and calls abandoned by the caller after a hold time greater than 60 seconds. The total of these callers shall not exceed 20 percent of the total calls during any month.

5. Contractor will measure the percent of accepted locate requests received using E-Ticket with a process interval (time from receipt until entry into the System) greater than two hours. The total of these requests shall not exceed five percent of the total E-Ticket requests received

6. Contractor will provide a written evaluation of the cause of and corrective action taken for any performance levels that exceed contractual levels by more than 50% during any single month or exceed the contract levels for two consecutive months. This evaluation shall be received by the Board representative no later than the 10th day of the following month. At the request of the Board, the Contractor will conduct a study to measure the input of data base changes to insure that 95% of changes are entered

within the criteria established in Section II; D. System Specifications; Item 6.

7. Contractor will measure on a monthly basis the transmission time for various types of tickets. The queue time shall not exceed the intervals identified below:

   a. Emergency ticket transmission time via electronic means (fax, email, printer, or computer) should be less than five minutes.

   b. Routine ticket transmission time via electronic means (fax, email, printer, or computer) should be less than 30 minutes.

8. The Contractor shall electronically record all telephone calls (incoming and outgoing) involving locate requests, and tapes of said calls shall be maintained for a period of seven full years.

III. CENTER OPERATIONS

A. All changes required as a result of modifications to the South Dakota Statutes, Administrative Rules shall be completed as required by the Statutes or Administrative Rules at the cost of the Contractor. All changes required as a result of modifications to approved policies of the Board shall be made at the cost of the Board. Both parties shall mutually agree upon the timing and cost of changes associated with Board policy prior to implementation.

B. Center services shall be provided 24 hours per day, seven days per week, including holidays. Ticket formats and telephone attendants answering notice requests shall identify the Center as the South Dakota One Call Center.

C. The Center shall have available for Board review, documented operations procedures, human resources policies, and the manual used for training Customer Service Representatives.

D. On any type of locate request identified by the Board, the Center will advise the caller of specific conditions that apply. Specific language will be developed by the Contractor and approved by the Board or its representative.

E. The "800" numbers assigned by the Board shall be accessible from within or outside the State of South Dakota. The "800" numbers remain the property of the Board.

F. The Center shall electronically record all telephone calls (incoming and outgoing) involving locate requests. Each locate request will be numbered sequentially for each year. Each locate request will have a number unique to that request, and no two requests will have the same ticket number in any calendar year.

G. The Customer Service Representative shall provide the caller with the unique ticket number and the Facility Operators who are notified by the ticket.

H. The Center shall provide on-going technical support, including training and updates, for all software and web based products offered by the Contractor and approved by the Board. This training shall include but not be limited to electronic ticketing classes held at locations in South Dakota, database entry classes held via the web or in South Dakota and user group surveys to evaluate and assist in System improvements.

I. Contractor may be requested to participate in special projects or system modifications that will serve to enhance the usability of the South Dakota One Call System. The Contractor will be reimbursed for the cost of these projects at the hourly rate identified in Exhibit B or at a project amount acceptable to both parties.

IV. ADVERTISING AND PUBLIC RELATIONS

A. The Contractor shall assist in advertising and promoting the Center to excavators and Facility Operators. This shall specifically focus on improving the quality of ticket input, the establishment of ticket receipt through mechanized systems and the updating of Facility Operator Database information. This shall include the design and publication of brochures that promote the above mentioned items.

B. The Contractor shall develop a semi-annual newsletter for the users of the electronic ticketing and database systems that provides for the education of the users and a means for users to provide suggestions for improvements to the systems.

C. The Contractor shall be available at any reasonable time to attend functions that promote the Notification Center.

D. Costs associated with the above listed Advertising and Public Relations items would be the responsibility of the Contractor.

E. Contractor may be requested to purchase and distribute promotional or educational materials to excavators or Facility Operators. The Board will reimburse the cost of the promotional or educational material and any direct mailing costs to the Contractor.

V. BILLING AND COLLECTION

A. All billing and collection activities, to or from Facility Operators, for the services provided by the Center shall be the sole responsibility of the Contractor.

B. The billing shall be performed monthly and shall be based on the number of location requests transmitted to each individual Facility Operator's receiver times the fee established by the Board for each locate request. All billing shall be based on actual ticket numbers, not on attempted transmissions. The invoice shall be forwarded to the Facility Operator by the tenth of each month for the previous months locate requests and shall be due upon receipt. Any Facility Operator and the Contractor may agree to bill on a quarterly or threshold basis;

any agreement shall be effected only by written agreement signed by both the Facility Operator and the Contractor.

C. Facility Operators may be billed for supplemental services as identified on Exhibit B of this contract. Any other billing to Facility Operators for services related to this contract must have prior approval of the Board.

D. The Contractor may take legal action that it deems to be reasonably necessary to collect delinquent accounts, including but not limited up to three mailed notices of delinquency, referral of the claim to an attorney for an attorney's demand letter and/or the filing of a claim or lawsuit against the delinquent Facility Operator.

E. After all collection actions have been exhausted, and the Contractor desires to take legal action to collect funds due, upon request of the Contractor, the Board will consider assisting in the legal action by supplying personnel at any proceedings in connection with any collection action. Additionally, the Board may bring suit in its name jointly with the Contractor to enforce collection of unpaid member fees for services provided. In this case, the Contractor shall be responsible for a portion of the Board's legal fees and expenses on an equally shared cost basis.

EXHIBIT B
PRICE AGREEMENT
FOR THE OPERATION OF THE
SOUTH DAKOTA ONE CALL CENTER
August 30, 2010 through December 31, 2013

Having examined the Contract and Attachment A and, being fully advised of the work to be done in the operation of the South Dakota One-Call Notification Center, Korterra does hereby agree to furnish all necessary labor, materials, and equipment and do all the work as specified to fully operate the Center as shown by said Contract Documents at the unit prices, to-wit;

1. Base Cost

   A) Cost per Incoming Notification -

Unit Price for 2010	$3.65 / call
Unit Price for 2011	$3.80 / call
Unit Price for 2012	$3.95 / call
Unit Price for 2013	$4.10 / call

   Note: Includes cost of emergency voice notification, calls answered at alternate Center and the cost of Amber Alert Tickets

2. Optional Cost

   A) Initial Input and updates of Member Database Information

      a. Web based Facility Manager will be available at no cost to Facility Operators to establish an initial database.
      b. Other electronic methods, such as AutoCAD, micro station and MapInfo, will be available at no cost to Facility Operators.
      c. Manual* input of initial or database updates are available at $30.00 per hour (minimum one hour)

      * Manual updates are when the facility operator elects to not use the web based database system and the Center is required to manually intervene to input the database information.

   B) Initial Input and updates of Member Database Information

	2010/2011
Electronic	$0.00 per ticket
Email	$0.00 per ticket
Facsimile	$0.06 per ticket
Telephone	$2.00 per ticket
Duplicate Facsimile	$0.06 per ticket
Duplicate Electronic	N/C per initial set-up

	2012
Electronic	$0.00 per ticket
Email	$0.00 per ticket
Facsimile	$0.06 per ticket
Telephone	$2.00 per ticket

Duplicate Facsimile	$0.06 per ticket
Duplicate Electronic	N/C per initial set-up

	2013
Electronic	$0.00 per ticket
Email	$0.00 per ticket
Facsimile	$0.06 per ticket
Telephone	$2.00 per ticket
Duplicate Facsimile	$0.06 per ticket
Duplicate Electronic	N/C per initial set-up

C) Retrieving specific ticket data for parties other than the South Dakota One-Call Board. The South Dakota One-Call Board may request ticket information below at no charge if the sole purpose of the request is for quality review and/or to resolve comments and complaints from excavators or members.

Specific Ticket Number Provided	$ 10.00 per ticket retrieved
No Ticket Number Available	$ 25.00 per month searched
Electronic Tape of Call (valid period)*	$ 25.00
Electronic Tape of Call (outside valid period)*	$ 25.00

* In addition to Ticket Search if required

D) Operating an In-State Center as a phone answer center with communication link to remote database

$0.98 additional cost per Incoming notification

E) Completion of specialized tasks (e.g. mapping) and/or other Board Requested Projects*

Contract period: $30.00 per hour

*Parties may agree to a set price for a project that supersedes the unit price

3. Geographic Location of Primary Answer Center: Dallas, TX
Geographic Location of Alternate Answer Center: Allen, TX
Geographic Location of In-State Center: As agreed with the Board.