



**SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY
SANFORD UNDERGROUND RESEARCH FACILITY**

GENERAL CONDITIONS

**CONTRACTOR (TBD)
LZ DAVIS CAMPUS INFRASTRUCTURE IMPROVEMENTS
Contract #2017-17**

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ARTICLE 1 DEFINITIONS

- 1.1 Owner:** South Dakota Science and Technology Authority
- 1.2 Contractor:** The person or entity identified as such in the Agreement for Construction, including authorized representatives.
- 1.3 Subcontractor:** Any individual, firm or corporation to whom the Contractor sublets any part of the contract for supplying materials and labor, or only labor, at the site of the project.
- 1.4 Contract Documents:** The Request for Proposal with Instructions to Bidders and attached Exhibits, the Plans, Drawings, and Specifications, and these General Conditions.
- 1.5 Contract (or Agreement):** The Contract Documents form the contract. The Contract may be amended or modified only in writing in the manner set forth in Article 13. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner and any Subcontractor, Sub-subcontractor or supplier.
- 1.6 Work:** The completed construction required by the Contract Documents, and every part thereof, including all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated into such construction.
- 1.7 Project:** The total construction of which the work performed under the Contract Documents may be the whole or a part.
- 1.8 Drawings or Plans:** The graphic and pictorial portions of the Contract Documents showing the design, dimensions and layout of the work including, but not limited to, plan views, elevation views, details, sections, schedules, and diagrams.
- 1.9 Specifications:** The written requirements for materials, equipment, construction systems, standards and workmanship.

ARTICLE 2 EXECUTION, CORRELATION AND INTENT

2.1 By executing the Agreement for Construction, the Contractor represents that Contractor has examined the Contract Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of this Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others. Should the Drawings or the Specifications disagree in themselves or with

each other, the Contractor shall provide the better quality or greater quantity of work and/or materials unless otherwise directed by written change.

2.2 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

2.3 Owner assumes no liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Specifications and Drawings.

2.4 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

2.5 Where codes, standards, requirements and publications or public and private trade associations or other bodies are referred to in the Specifications, references shall be understood to be in the latest revision prior to the date of receiving bids, except where otherwise indicated.

2.6 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work, of the construction of the Project generally, and industry standards.

2.7 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents. A copy of the manufacturer's written or printed directions shall be provided to the Owner upon completion of the project.

ARTICLE 3

OWNERSHIP, USE OF DOCUMENTS, CONFIDENTIALITY OF DOCUMENTS

3.1 Ownership of Work Product

Any plans, specifications, engineering calculations, technical data, reports, miscellaneous drawings, and all information contained therein provided by Owner, 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 Owner. 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 Owner, without the express written approval of the Owner. The Owner shall not unreasonably withhold such approval for dissemination of these materials as necessary to subcontractors and suppliers.

3.2 Confidentiality of Documents

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 subcontractors 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 Owner.

3.3 Return of Documents

All documents covered by this Article 3 shall be delivered to the Owner 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 Owner and any documents that are retained, with or without permission, shall be subject to all of the requirements of this Article 3.

3.4 Terms to be Included In Subcontracts

The Contractor shall include the requirements of this Article 3 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.

ARTICLE 4 OWNER'S RIGHTS AND RESPONSIBILITIES

4.1 Information and Services Required of the Owner

4.1.1 The Owner shall secure and pay for necessary easements, permits, and other property rights required for the construction of the Project.

4.1.2 Information under the Owner's control shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information.

4.1.3 Unless otherwise provided in the Contract Documents, the Contractor will be furnished with electronic copies of the Drawings and Specifications necessary for the execution of the Work. If no electronic copies are available Contractor will be furnished with a reasonable number of prints of Drawings and Specifications, at no cost to Contractor.

4.1.4 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein.

4.2 Owner's Right to Stop the Work: If the Contractor fails to correct defective Work as required by Article 14 or fails to carry out the Work in accordance with the Contract Documents in any material respect, the Owner, in addition to its other remedies, by a written order signed by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

4.3 Owner's Right to Carry Out the Work: If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents in any material respect and fails within three working days after receipt of written notice from the Owner or in such time as may be established in written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, or if the Work is not being performed properly or in accordance with the scheduling provisions of the Contract Documents in any material respect, whether or not the Contractor is in default, the Owner may, after the expiration of such notice period and without prejudice to any other remedy it may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for Owner's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand. If, in the sole judgment of the Owner, an emergency exists as a result of the Contractor's default, neglect or failure to correct defective work, which in the Owner's

opinion, requires more immediate corrective action than the Contractor is able to provide, then the Owner may, without notice to the Contractor, perform such corrective work or cause it to be performed by others. The Owner shall also have the right to carry out the Work, or any part thereof, during the period of any work stoppage without terminating the Contract. If the Owner wishes to exercise this right it will give the Contractor three days-notice of its intent to do so. In any such case, an appropriate deductive Change Order shall be issued in accordance with Article 13, the amount of which shall not exceed an amount which equals the estimated direct cost, including the Owner's fees, of performing the work which the Owner elects to perform and the proportionate amount of the Contractor's fee associated therewith.

4.4 Owner's Right to Access for Observation or Other Work: The Owner reserves the right of access to any part of the Work, at any time, for the purpose of observation, or testing, or to install other work, either with its own forces or with separate contractors. Such access is not to be construed to mean partial occupancy by Owner, and no claim for additional compensation by the Contractor because of such access or installation of work will be considered. Contractor shall cooperate with Owner during Owner's access or performance of work.

4.5 Owner's Representative: Owner's Representative on this project is:

SDSTA REPRESENTATIVE

South Dakota Science and Technology Authority
630 East Summit Street
Lead, SD 57754

Business: 605.722.xxxx
EMAIL@sanfordlab.org

ARTICLE 5 CONTRACTOR'S RESPONSIBILITIES

5.1 Review of Contract Documents: The Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission Contractor may discover. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistency or omission Contractor may discover and report, nor for any damage resulting from any such errors, inconsistencies or omissions which Contractor could not reasonably have discovered. The Contractor shall perform no portion of the Work at any time without Contract Documents.

5.2 Supervision and Construction Procedures

5.2.1 The Contractor shall supervise and direct the Work, using the skill and attention necessary to complete the Work in a workmanlike manner. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the contract. The Owner shall have no control over, or responsibility for, any such matters.

5.2.2 Nothing contained in the Contract Documents shall be interpreted by implication or otherwise as a direction by the Owner to the Contractor as to construction means, methods, techniques, sequences and procedures. If there is express reference to such means, methods, techniques, sequences and procedures, it is solely for the purpose of insuring that the Work will be produced in accordance with the desired objectives as set forth in the Contract Documents but such express reference shall in no way relieve the Contractor of its responsibilities in connection therewith. If the Contractor does not wish to accept the responsibility for any means, techniques,

sequences or procedures which are expressly set forth in the Contract Documents, then the Contractor shall notify the Owner in writing of the actual means, methods, techniques, sequences and procedures which Contractor will employ on the Work if these differ from those expressly referred to in the Contract Documents. All loss, damage or liability or cost of correcting defective Work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor notwithstanding that any of the same shall have been referred to expressly in the Contract Documents.

5.2.3 The Contractor shall be responsible to the Owner for the acts and omissions of Contractor's employees, Subcontractors, Sub-subcontractors, materialmen and suppliers and their agents and employees, and other persons performing any of the Work.

5.2.4 The Contractor shall not be relieved from Contractor's obligations to perform the Work in accordance with the Contract Documents by the use or occupancy of part of the Work by the Owner as provided in Article 4.4, by the performance of Work related to the Project by others as provided in Article 7.1, or by inspections, tests or approvals required or performed under Article 8.7 by persons other than the Contractor.

5.2.5 The Contractor shall coordinate and supervise the Work performed by Subcontractors to the end that the Work is carried out without conflict between trades or jurisdictional disputes and so that no Subcontractor, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each other Subcontractor, any separate contractor, and the Owner, every reasonable opportunity for the installation of the Work and the storage of materials, and shall provide access to and the use of necessary loading dock and hoist facilities, adequate storage room and necessary utilities and other services.

5.2.6 Wherever the work of a Subcontractor is dependent upon the work of other Subcontractors, or the Contractor, the Contractor shall require the Subcontractor to:

5.2.6.1 Coordinate Subcontractor's work with the dependent work;

5.2.6.2 Provide necessary dependent data and requirements;

5.2.6.3 Supply and/or install items to be built into dependent work of others;

5.2.6.4 Make provisions for dependent work of others;

5.2.6.5 Examine dependent drawings and specifications;

5.2.6.6 Examine previously placed dependent work;

5.2.6.7 Check and verify dependent dimensions of previously placed work;

5.2.6.8 Notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of Subcontractor's work; and

5.2.6.9 Not proceed with work until the unsatisfactory dependent conditions have been corrected.

Installation of Work by a Subcontractor in any given area shall constitute acceptance by the Subcontractor and Contractor of the previously placed dependent work.

5.3 Labor and Materials

5.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The word "provide" shall mean furnish and install complete, including connections, unless otherwise specified. All connection charges, assessments or inspection fees which may be imposed by any public agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility.

5.3.2 The Contractor shall at all times enforce strict discipline and good order among Contractor's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him/her. The Contractor shall be responsible to maintain and observe, and to require the Subcontractors to maintain and observe, sound labor practices, and shall require each Subcontractor to take all steps reasonably necessary to avoid labor disputes or stoppages.

5.3.3 Except in the event of emergency, no substantial field operations shall be performed outside of regular working hours without the prior approval of the Owner. The Contractor will not be entitled to additional compensation for work performed outside of regular working hours except as otherwise expressly agreed in writing by the Owner prior to the performance of such overtime work. Additional compensation for such authorized overtime shall be limited to the direct cost of the premium portion only of such authorized overtime. No additional indirect cost or fee shall be included.

5.3.4 Substitutions

5.3.4.1 The products, materials and equipment of manufacturers referred to in the Specifications and the Drawings are intended to establish the standard of quality and design required by the Owner; however, products, materials and equipment manufacturers, other than those specified, may be used, if equivalent and approved in writing by the Owner.

5.3.4.2 It is deemed that the term 'or approved equal' is included after all products, materials and equipment referred to in the Specifications or the Drawings.

5.3.4.3 The Owner will be the sole judge of equivalency of proposed substitute products, materials, and equipment.

5.3.4.4 If the Contractor desires to use a substitute item, Contractor shall make application to the Owner in writing in sufficient time (having regard to the progress of the Work, the period of delivery of the goods concerned, and adequate time for the Owner's review) stating and fully identifying the proposed substitute, cost changes (if any), and submitting substantiating data, samples, brochures, etc. of item proposed. It is the Contractor's responsibility to provide sufficient evidence by tests or other means to support any request for approval of substitution.

5.3.4.5 Prior to proposing any substitute item, the Contractor shall satisfy itself that the item Contractor proposes is, in fact, equal to that specified, that it will fit into the space allocated, that it affords comparable ease of operation, maintenance and service, that its appearance, longevity and suitability for the climate and use are comparable to that specified, and that the substitution is in the Owner's best interest.

5.3.4.6 The burden of proof that a proposed substitution is equal to a specified item shall be upon the Contractor, who shall support the request with sufficient test data and other means to permit the Owner to make a fair and equitable decision on the merits of the proposal. Any item by a manufacturer other than those cited in the Contract Documents, or of brand name or model number or of generic species other than those cited in the Contract Documents, will be considered a substitution.

5.3.4.7 Materials and methods proposed as substitutions for specified items shall be supported by certification of their acceptance for use by an authority, person or persons having jurisdiction over the use of the specified material or method.

5.3.4.8 Acceptance of substitutions shall not relieve the Contractor from responsibility for compliance with all the requirements of the Contract Documents. The Contractor shall be responsible at its own expense for any changes in other parts of the Work of this Contract or the work of other contractors caused by its substitutions, including cost of all design and redesign services related thereto.

5.3.4.9 The Contract Term shall not be extended by any circumstances resulting from a proposed substitution, nor shall the Contractor be entitled to any compensation for any delay caused thereby or related thereto.

5.3.4.10 All costs for the evaluation of proposed substitutions, whether approved or not, shall be borne by the Contractor.

5.3.5 All materials and equipment shall be delivered, handled, stored, installed and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with Contract Document requirements. The Contractor will store packaged materials and equipment in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use, and deliver materials and equipment in ample time to facilitate inspections and tests prior to installation. The term 'delivery' in reference to any item specified or indicated, means the unloading and storing with proper protection at the project site. Damaged materials or equipment will be rejected and removed from the site by the Contractor.

5.3.6 Before ordering materials, equipment, or performing Work, the Contractor shall verify indicated dimensions. If a discrepancy exists, the Contractor shall notify the Owner of same immediately. The Owner will then clarify the intended design. The Contractor shall take field measurements required for the proper fabrication and installation of the Work. Upon commencement of any item of Work, the Contractor shall be responsible for dimensions related to such item of Work.

5.4 Guarantees/Warranty

5.4.1 The Contractor guarantees and warrants to the Owner that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

5.4.2 The Contractor will indemnify the Owner against loss, including loss of use and lost revenues resulting from a breach of the Contractor's guaranty and warranty under Article 5.4.1, whether the loss arises before or after the Owner's acceptance of the Project.

5.4.3 Where the Contract Documents provide for equipment and material warranties in addition to the Contractor's guarantees and warranty contained in Article 5.4.1, such warranties shall at a minimum:

5.4.3.1 Provide that the term of the warranty shall start on the date of substantial completion of the project or the date the Owner takes beneficial occupancy of any portion of the project that requires the use or start-up of the warranted equipment or material, whichever date occurs first.

5.4.3.2 Provide for complete repair or replacement of defective equipment or material.

5.4.3.3 Provide all materials, shipping, and labor necessary to repair or replace defective equipment or material at no expense to the Owner.

5.4.3.4 Provide that any replacement parts used in repairing or replacing defective equipment or material shall be new or in a like-new condition.

5.4.3.5 Provide for the complete repair or replacement of defective equipment or material within two weeks after receiving written notice of the defect; provided however, that the Owner can, at its sole discretion, grant an extension of time for good cause shown.

5.4.3.6 Provide for no limitation of liability should the Contractor and/or manufacturer fail to repair or replace defective equipment or material within the time specified in Article 5.4.3.4 or should the remedy of repair or replacement otherwise fail.

5.4.3.7 Be construed under South Dakota law.

5.4.3.8 Provide that any legal action brought on the warranty shall be brought only in a South Dakota court.

5.5 Taxes: The Contractor shall pay all sales, consumer, use, excise, and other similar taxes for the Work or portions thereof which are to be provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective.

5.6 Permits, Fees and Notices

5.6.1 The Contractor shall secure and pay for all permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily

secured after execution of the Contract and which are legally required at the time the bids are received.

5.6.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall indemnify the Owner against all costs, fines and damages, and all actions, claims and proceedings, due to its failure to do so.

5.6.3 The Contractor and its Subcontractors shall acquaint themselves with all codes governing their work and shall complete the Work in conformance with all codes governing their work.

5.6.4 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, Contractor shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification.

5.6.5 If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto.

5.7 Contractor's Representative: The Contractor shall employ a competent Representative and necessary assistants all of whom are acceptable to the Owner and who shall be in attendance at the Project site during the progress of the Work. The Contractor's Representative shall represent the Contractor and all communications given to the Contractor's Representative shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. The Contractor's Representative shall not be changed without the Owner's consent. The Contractor's Representative in this Project is **NAME (email)**.

5.8 Shop Drawings, Product Data and Samples

5.8.1 Shop Drawings are drawings, diagrams, schedules or other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

5.8.2 Product Data are illustrations, standard schedules, performance charts, instructions brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

5.8.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

5.8.4 The Contractor shall submit a schedule for submittal of Shop Drawings, Product Data and Samples to the Owner for review. The Contractor shall review, approve and submit to the Owner, with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents.

5.8.4.1 The Owner reserves the right to review Shop Drawings, Product Data, Samples and submittals in a sequence consistent with the sequence of erection, installation and assembly of the various elements of the Work.

5.8.4.2 No extension of time will be granted, nor will any consideration be given to claims arising out of the Contractor's failure to submit any Shop Drawing, Product Data, Samples or related submittals according to the schedule or otherwise in a manner which does not allow adequate lead time for Owner's review, or does not allow ample time for revision, resubmission and subsequent review by the Owner as required.

5.8.4.3 Composite Drawing: In the interest of coordinating and expediting the work in critical areas, i.e. exterior wall components, mechanical/electrical systems, and other areas so requested by the Owner, the Contractor shall prepare and submit, to the Owner for review, Composite Drawings embodying the Work of the various trades and/or Subcontractors involved. After review, the Contractor shall distribute prints or reviewed Composite Drawings to affected trades and/or Subcontractors. The Contractor shall require that the involved trades and/or Subcontractors cooperate in preparation of the Composite Drawings to assure proper coordination between trades and/or Subcontractors. The participating trades and/or Subcontractors shall indicate their approval on these drawings.

5.8.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that Contractor has determined and verified all materials, field measurement, and field construction criteria related thereto, checked the Shop Drawings, Product Data, and Samples for complete dimensional accuracy; that Contractor has checked to insure that work contiguous with and having bearing on the Work shown on the Shop Drawings is accurately and clearly shown, that Contractor has checked the Shop Drawings against the Composite Drawings prepared by the Contractor, that the Work has been coordinated and that the equipment will fit into the assigned spaces, and that Contractor has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

5.8.5.1 Any Shop Drawing, Product Data or Sample submitted without Contractor's approval will not be processed for review by the Owner, but will be returned to the Contractor for compliance with the above procedures, in which event it will be deemed that the Contractor has not complied with the provisions herein specified and the Contractor shall bear the risk of all delays as if no Shop Drawing, Product Data and Sample had been submitted.

5.8.5.2 Shop Drawings shall bear a coordination and approval stamp signed by the Contractor and each contiguous Subcontractor, which shall confirm the representations set forth in Article 5.8.5. Shop Drawings shall bear the seal of a registered professional engineer when required by the Specifications or state law.

5.8.6 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals. Unless such written notice has been given, the Owner's action on a resubmitted Shop Drawing, Product Data, or Sample shall not constitute review and action of any changes not requested on the prior submittal.

5.8.7 No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.

5.9 Use of Site

5.9.1 The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the Site with any unnecessary or surplus materials or equipment or debris.

5.9.2 Notwithstanding the designation of construction limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. Trenching, utility work, site development, landscaping and all other Work, if required beyond such designated limits, shall be scheduled in such a manner as to cause or occasion a minimum of inconvenience or disturbance or interference with the normal operation of the Owner, abutters, and the public. The Contractor shall obtain the Owner's prior approval for such operations, prosecute such operations expeditiously, and restore the affected area and other areas needed for access to their original condition immediately upon completion of such operations, unless otherwise specified herein.

5.9.3 All operations shall be carried out so as to avoid endangering any adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof.

5.9.4 The Contractor shall confine operations at the site to work related activities.

5.10 Cutting and Patching of Work

5.10.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly.

5.10.2 The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate contractors or adjacent facilities by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor its consent to cutting or otherwise altering the Work.

5.10.3 Structural elements of the Work shall not be cut, patched or otherwise altered or repaired without prior written authorization by the Owner.

5.10.4 Authorization to proceed with remedial operations for any damaged or defective element or portion of the Work shall not constitute a limitation or a waiver of the Contractor's right to require the removal and replacement of any Work which fails to fulfill the requirements of the Contract Documents.

5.11 Cleaning Up

5.11.1 The Contractor at all times shall keep the Site and related area free from accumulation of waste materials or rubbish caused by Contractor's operations. At the completion of the Work, Contractor shall remove all waste materials and rubbish from and about the Project site as well as

tools, construction equipment, machinery and surplus materials. All waste and rubbish shall be removed from the Site at least weekly and more often if necessary.

5.11.2 If the Contractor fails to maintain a clean and safe Project and/or fails to clean up at the completion of the Work, the Owner may do as provided in Article 4.3 and the cost thereof shall be charged to the Contractor.

5.12 Communications: The Contractor shall forward all communications to the Owner through Owner's Representatives set forth in Article 4.5.

5.13 Royalties and Patents: The Contractor shall pay all royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular manufacturer or manufacturers are specified, but if the Contractor has reason to believe that the design, process or product specified is an infringement of a patent, Contractor shall be responsible for such loss unless he promptly gives such information to the Owner in writing.

5.14 Indemnification

5.14.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, and its consulting engineers, and their respective successors, agents and employees from and against all claims, damages, liabilities, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any tortious act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation or indemnity which would otherwise exist as to any party or person described in this Article 5.14.

5.14.2 In any and all claims against the Owner, or any of its consultants, and their respective successors, agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 5.14 shall not be limited in any way by any limitation on the amount or type of damages, compensations or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

5.14.3 The Contractor agrees to defend, indemnify and save the Owner or any of Owner's consulting engineers, and their respective successors, agents or employees harmless from all costs, liabilities, damages or expenses, including reasonable attorneys' fees, incurred by them, by virtue of any claim or claims whatsoever filed by any Subcontractor, Sub-subcontractor, mechanic, laborer or materialman making claims arising from the Work by, through, or under the Contractor. The Contractor also hereby agrees to defend, indemnify and hold harmless, protect, and defend the Owner and Owner's consulting engineers, and their respective successors, agents or employees from and against any liability, claim, judgment, loss, damage, including but not limited to direct, indirect and incidental and consequential damages, attorneys' fees, court costs and expenses of

collection, occasioned in whole or in part by the failure of the Contractor, its Subcontractors, or Sub-subcontractors to comply with any of the terms or provisions of the Contract Documents.

5.14.4 Anything in the foregoing to the contrary notwithstanding, the Contractor's obligation to indemnify as set forth above shall include any claims, damages, liabilities, losses and expenses, including but not limited to attorneys' fees, arising out of related to the use by Contractor of any of Owner's equipment, and said obligation to indemnify shall arise regardless of any tortious act or omission, or lack thereof, by Contractor.

5.15 Default

5.15.1 The Contractor shall be in default of the Contract if:

5.15.1.1 Contractor refuses or fails to prosecute the Work in accordance with the Contract Documents in any material respect;

5.15.1.2 Contractor fails to make proper payment to Subcontractors for materials or labor (provided Owner shall have paid to Contractor any payments due from Owner in connection with such materials or labor);

5.15.1.3 Contractor disregards laws, ordinances, rules, building codes and regulations or orders of any public authority having jurisdiction;

5.15.1.4 Contractor fails to coordinate its work with other contractors and Subcontractors as required under Article 7 of these General Conditions;

5.15.1.5 Contractor fails to comply with the scheduling requirements of the Contract;

5.15.1.6 Contractor fails to promptly replace rejected material or correct rejected workmanship; or

5.15.1.7 Contractor fails in any material respect to observe any other terms, provisions, conditions, covenants and agreements in the Contract to be observed and performed on the part of the Contractor.

5.15.2 In the event of any default by Contractor under the Contract, Owner shall have the right to take such measures as it deems necessary to correct the default, at the Contractor's sole cost and expense, and to deduct such costs, including but not limited to the Owner's fees, from amounts otherwise owing to the Contractor, or to terminate the Contract in accordance with Article 15.2 of the General Conditions, in addition to any and all other remedies that Owner may now or hereafter have. If the amounts owing to the Contractor are insufficient to cover the Owner's cost of corrections, the Contractor shall pay such amount promptly upon demand.

5.16 Use of Owner's Equipment.

5.16.1 If the Contractor uses Owner's equipment in connection with the Work, Contractor shall be responsible to use the equipment in a good and businesslike manner and consistent with the Owner's environmental, health and safety requirements and applicable law. If the equipment is damaged or destroyed while being used by Contractor or while in Contractor's care, custody or control, regardless of the cause or party responsible for the damage or destruction, Contractor shall

repair or replace the equipment at Contractor's expense. Nothing in the foregoing shall require the Contractor to be responsible for ordinary wear and tear.

5.16.2 If the Contractor's use or care, custody or control of Owner's equipment results in damage or injury to Owner's property or employees, Contractor shall be liable for any such damage or injury, and Contractor shall promptly repair or replace the equipment so as not to interfere with Owner's operations.

5.16.3 Prior to using or taking custody of any of Owner's equipment, Contractor shall provide proof reasonably acceptable to Owner that the Contractor's liability insurance will afford coverage for any claims arising out of Contractor's use or care, custody or control of Owner's equipment, and that Contractor carries property insurance that will cover Contractor's obligation to repair or replace Owner's equipment as provided herein.

5.16.4 Nothing in this section 5.16 shall be construed to authorize Contractor to use Owner's equipment without Owner's prior written consent and upon such terms and conditions as Owner may require.

ARTICLE 6 SUBCONTRACTORS

6.1 Definitions

6.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents and means a Subcontractor or its authorized representative. The term Subcontractor does not include any separate contractor or its subcontractors.

6.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents and means a Sub-subcontractor or an authorized representative thereof.

6.2 Award of Subcontracts and Other Contracts for Portions of the Work. The Contractor shall conduct an investigation of each of its proposed Subcontractor's capabilities to assure each is responsible and has the requisite experience, skill, physical plant, and financial strength necessary to perform each Subcontractor's respective Work. The Contractor shall not contract with any Subcontractor that is not responsible or does not have the requisite experience, skill, physical plant, and financial strength necessary to perform its part of the Work.

6.3 Subcontractual Relations

6.3.1 The Contractor shall not include any provisions in its contracts with its Subcontractors which will in any way prejudice the rights of the Owner under the Contract between the Owner and the Contractor.

6.3.2 The Subcontract agreement shall require the Subcontractor to consent to any assignment of the Subcontract to the Owner in the event of a default by the Contractor hereunder.

6.3.3 Nothing in Article 6 shall be construed to create a privity of contract between the Owner and any Subcontractor.

6.4 Notification of Subcontractors to Owner. Contractor shall provide to Owner a listing of every Subcontractor that Contractor intends to employ on the Project and include: Company name, representative name, phone number, and email address.

ARTICLE 7 WORK BY OWNER OR BY SEPARATE CONTRACTORS

7.1 Owner's Right to Perform Work and to Award Separate Contracts

7.1.1 The Owner reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with such work. Such work may include Work assigned to the Contractor under the Contract Documents, which Work is not being performed properly or in accordance with the scheduling provisions of the Contract Documents, whether or not the Contractor is in default under Article 5.15.1 and whether or not the Owner has terminated the Contract under Article 15.2. If the Owner elects to exercise this right it will do so upon reasonable notice to the Contractor. There shall be an appropriate adjustment in amounts payable to the Contractor to reflect the Work undertaken by the Owner, which the parties shall confirm by Change Order in accordance with Article 13. If the Contractor claims that the delay involved is because of action or inaction by the Owner, Contractor shall make such claim as provided elsewhere in the Contract Documents.

7.1.2 The Owner will provide for the coordination of the work of its own forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Article 7.2.

7.2 Mutual Responsibility

7.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity and all required facilities for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate its Work with theirs as required by the Contract Documents.

7.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the Owner or any separate contractor, the Contractor shall, prior to proceeding with the Work, promptly report to the Contractor any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to report shall constitute an acceptance of the Owner's or separate contractor's work as fit and proper to receive the Work, except as to defects which may subsequently become apparent in such work by others.

7.2.3 Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor.

7.2.4 Should the Contractor wrongfully cause damage to the work or property of the Owner or of a separate contractor, or to other work on the site, the Contractor shall promptly remedy such damage.

7.2.5 Should the Contractor wrongfully cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall participate in the defense of such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorneys' fees and court or arbitration costs which the Owner has incurred.

7.3 Owner's Right to Clean Up: If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up the Project Site and related areas on a routine basis as required by Article 5.11, the Owner may clean up and charge the cost thereof to the contractors responsible therefor as the Owner shall determine to be just.

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

8.2 Successors and Assigns: The Owner and the Contractor each binds itself, its successors, assigns and legal representatives to the other party hereto and to the successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any money due or to become due to it hereunder, without the previous written consent of the Owner.

8.3 Written Notice: All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been given if sent pursuant to Article VII of the Agreement for Construction.

8.4 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 its employees, agents or others for whose acts it 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.

8.5 Payment and Performance Bond: Before commencing the Work, the Contractor shall provide a Payment and Performance Bond in accordance with the requirements of the Instructions to Bidders.

8.6 Rights and Remedies

8.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. This provision relates particularly to the Contractor's obligations under Article 14.2.2.

8.6.2 No action or failure to act by the Owner or Contractor shall constitute a waiver of any right or duty afforded either of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

8.7 Tests

8.7.1 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness so the Owner may observe such inspection, testing or approval. The Contractor shall perform and bear all costs of such inspections, tests and approvals, unless otherwise provided.

8.7.1.1 Where certain testing and inspection requirements are set forth in the various sections of the Contract Documents to be performed at the expense of the Owner, the Owner will retain the services of testing laboratories, agencies, or consultants, to perform such tests or inspections and render such services as may be required to verify that the work fulfills the requirements and intent of the Contract Documents. Such services will be performed in a manner consistent with the requirements of the Owner and the various agencies having jurisdiction over the Work and in accordance with reasonable standards of architectural and engineering practice.

8.7.1.2 The Owner reserves the right to modify the scope of or to re-allocate any of the testing and inspection services specified in the various sections of the Contract Documents to be performed by a testing laboratory, agency or consultant retained by the Owner in connection with the Work when it can be satisfactorily established that such adjustment in scope is consistent with the intent of the Contract Documents. In the event that the Contractor shall not concur with such modification of scope or re-allocation of such services, Contractor shall immediately notify the Owner in writing.

8.7.2 If the Owner determines that any Work requires special inspection, testing, or approval which Article 8.7.1 does not include, Owner will, by written authorization, order the performance of such services by qualified independent testing laboratories, agencies or consultants as may reasonably be required or instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Article 8.7.1. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, and the cost of retesting; otherwise the Owner shall bear such costs, and an appropriate Change Order shall be issued.

8.7.2.1 If Owner's observation or any inspection or testing undertaken pursuant to Article 8.7 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply with (1) the requirements of the Contract Documents or, (2) with respect to the performance of the Work, with laws, ordinances, rules, regulations, building codes or orders of any public authority having jurisdiction, the Owner will have the authority to order inspection and/or testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as Owner may in its reasonable opinion consider necessary or advisable, and the Contractor shall bear all costs thereof, including the cost of the tests, correction of the Work, and the cost of retesting made necessary thereby.

8.7.3 Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered to the Owner.

8.7.3.1 The Contractor shall obtain and deliver promptly to the Owner any certificates of final inspection of any part of the Work or operating permits for any mechanical or electrical apparatus, such as elevators, escalators, boilers, air compressors, fire alarms, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Except as is otherwise provided in Article 9.1.3, receipt of such permits or certificates by the Owner shall be a condition precedent to Completion of the Work.

8.7.3.2 Copies of reports issued as a result of services performed at the expense of the Owner pursuant to the provisions of this Article will be distributed to all parties to the Contract.

8.7.4 If the Owner is to observe the inspections, tests or approvals required by the Contract Documents, Owner will do so promptly and, where practicable, at the source of supply.

8.7.5 In connection with testing and inspection services performed at the expense of the Owner, the Contractor shall provide samples of materials and/or elements of the Work required as test specimens and shall provide incidental labor and facilities at the site reasonably required in support of such services.

8.7.6 The cost of testing services required solely for the convenience of the Contractor in its scheduling and performance of the Work shall be borne by the Contractor.

8.7.7 The cost of testing services related to remedial operations performed to correct deficiencies in the Work shall be borne by the Contractor.

8.7.8 If, during the course of the performance of any testing, inspection, control, balancing, adjusting, or similar work by the Contractor or an agent of the Contractor, it is the opinion of the Owner that the Contractor or said agent has failed to perform such work in a satisfactory manner, the Contractor shall, at its own expense, retain the services of a service organization which is satisfactory to the Owner for the performance of such work.

8.8 Litigation/Arbitration

8.8.1 Unless otherwise specifically provided in this Agreement, all claims, counter-claims, disputes or other matters in question between the Owner and the Contractor arising out of, or relating to this Agreement, or the breach thereof, will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of South Dakota. Notice of a request for arbitration shall be sent in writing to the other party to this Agreement within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall a request for arbitration be made after the applicable statute of limitations for such claim under South Dakota Law has run. If the party receiving the notice of request does not agree to arbitration in writing within 10 calendar days, it will be deemed that the parties do not mutually agree to arbitrate the matter. A request to arbitrate shall not be deemed a condition precedent to the institution of legal proceedings. If the parties agree to arbitrate, the provisions of SDCL Chapter 21-25A shall apply.

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

ARTICLE 9 TIME

9.1 Definitions

9.1.1 The Contract Time is the period of time allotted in the Contract Documents for Substantial Completion of the Work as defined in Article 9.1.3, including authorized adjustments thereto.

9.1.2 The date of commencement of the Work is the date established in the Notice to Proceed.

9.1.3 The date of Substantial Completion of the Work is the date certified by the Owner when construction is sufficiently completed in accordance with the Contract Documents so that the Owner can occupy and utilize the Project for the use for which it is intended, and such Work is fully completed in accordance with the Contract Documents except for minor items, adjustments or corrections which have no material effect upon the utilization, function or intrinsic values of the entire Project, including all of its mechanical, electrical and other systems and facilities.

9.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically designated.

9.2 Progress and Completion

9.2.1 All time limits stated in the Contract Documents, including the Construction Completion Schedule, if applicable, are of the essence of the Contract.

9.2.2 The Contractor shall begin the Work on the date of commencement as defined in Article 9.1.2. Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

9.3 Delays and Extensions of Time

9.3.1 If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, or by any employee of the Owner, or by changes in the Construction Completion Schedule required by the Owner, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes not caused by the labor practices of the Contractor or any Subcontractor in contravention of applicable labor practices, 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 Owner shall determine, or the Owner may elect to require the Contractor to accelerate the Work, in which case the Contract Sum shall be increased by a Change Order in the amount of the direct cost to the Contractor (exclusive of overhead and profit of necessary overtime labor).

9.3.2 Any claim for extension of time shall be made in writing to the Owner 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. The Contractor shall provide an estimate of the probable effect on such delay on the progress of the Work.

9.3.2.1 Such claims shall set forth in detail the nature of the circumstances which form the basis for each such claim, the date upon which each such alleged cause of delay began, or began to affect the timely prosecution of the Work, and ended, or ceased to have an adverse effect upon the timely prosecution of the Work, and the number of days extension of time requested as a consequence of each such alleged cause of delay. The Contractor shall provide such supporting documentation as the Owner may require, including, where appropriate, a revised Construction Completion Schedule indicating all of the activities affected by the circumstances which form the basis for the claim.

9.3.2.2 The Contractor shall not be entitled to a separate extension of time as a consequence of each one of a number of causes of delay which may have a concurrent or interrelated effect on the progress of the Work.

9.3.2.3 The Owner shall have the right to defer its decision or decisions with reference to any claim or claims for an extension of time made pursuant to the provisions of this Article until the facts or circumstances which form the basis for such claim or claims may be fully assessed to the Owner's reasonable satisfaction.

9.3.2.4 Notwithstanding the provisions of Article 9.3.2, claims for an extension of time arising out of authorized changes in the Work shall be made in writing prior to or concurrent with the submission of the Contractor's proposal pursuant to such change. No extension of time arising out of changes in the Work will be granted subsequent to the date upon which the Contractor is authorized to proceed with such change or changes in the Work unless specific provisions governing a subsequent determination of an extension of time have been incorporated in such authorization to proceed with such change or changes in the Work. No claim for damages or separate compensation for delay arising from such change in the Work shall be recognized or be deemed valid, it being understood that any additional cost to the Contractor arising from such change shall be included in the amended Contract Sum set forth in such Change Order.

9.3.2.5 Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where work is performed. Determinations of the extent of delay attributable to unusual weather phenomena shall be made by comparing the weather for the contract period involved with the average of the preceding 5-year climactic range during the same period on the calendar. National Oceanic and Atmospheric Administration National Weather Service statistics for the locality or area where the work is performed shall be used to determine the 5-year average weather conditions. Time extensions for weather delays do not entitle the Contractor to "extended overhead" recovery.

9.3.3 If no agreement is made stating the dates upon which interpretations shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until 15 days after written request is made for them, and not then unless such claim is reasonable.

9.3.4 Should the Contractor fail to substantially complete the Work within the time agreed upon in the Contract Documents, or within such extra time as may have been allowed by increases in the Contract or by formally approved extensions granted by the Owner, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner the sums stipulated in the Agreement for Construction as liquidated damages for each calendar day of delay until the Work is substantially complete. This sum is not a penalty but is liquidated damages due the Owner from

the Contractor by reason of inconvenience to the Owner, added cost of engineering and supervision, and other items which have caused an expenditure of funds resulting from the Contractor's failure to complete the Work within the time specified in the Contract. In addition to liquidated damages, if any delay on the part of the Contractor, any Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable results in any claim by third parties against the Owner arising out of such delay, the Contractor shall pay, satisfy, and discharge all losses, damages and expenses arising out of such claims, including attorneys' fees, and shall indemnify and hold harmless the Owner and its agents and employees from and against all costs, fees, losses, damages, and expenses arising out of such claims enforced against the Owner.

9.3.5 No extension of time will be granted to the Contractor for any delay other than those described in Article 9.3.1.

9.3.5.1 Should the Contractor fail, refuse or neglect to supply a sufficiency of workers or to deliver the materials with such promptness as to prevent delay in the progress of the Work, or fail in any material respect diligently to commence and prosecute the Work and to proceed in accordance with the approved construction schedule, or if the different parts thereof are not commenced, prosecuted, finished, delivered or installed in such manner as will insure substantial completion in accordance with the approved Construction Completion Schedule, or if the Contractor shall fail in the performance of any of its obligations under this Contract in any material respect, the Owner shall have the right to direct the Contractor, upon 3 days-notice at the Contractor's cost and expense, to furnish such additional labor and to expedite deliveries of materials (or the Owner may furnish such labor and expedite such deliveries at the cost of the Contractor), which labor or expediting shall, in the Owner's opinion, be sufficient to speed up and complete the Work in accordance with the Construction Completion Schedule.

9.3.5.2 If such additional labor shall not be available, the Owner shall have the right to direct the Contractor at the latter's own cost and expense, to work overtime to such an extent as will be sufficient, in the Owner's opinion, to speed up and complete the Work as herein provided.

9.3.6 The Contractor's right to make a claim or claims for an extension of time, as provided in Article 9.3.1, shall not preclude the Contractor's right to make a claim for delay damages arising out of the Owner's significant interference, by action or inaction, with the Contractor's Work.

9.3.7 Should the contractor fail to substantially complete acceptance and commissioning for the construction project within the time frame (January 2, 2018 – April 27, 2018), Contractor shall be liable for liquidated damages in the amount of **\$50 per day for contract values up to \$500,000 and an additional \$10 per day for each \$100,000 of value beyond \$500,000**. Substantial completion does not include final RSS utility connections as those tasks may be delayed beyond the April 27, 2018 time frame. This sum is not a penalty but is liquidated damages due the Owner from the Contractor by reason of inconvenience to the Owner, added cost of engineering and supervision, and other items which have caused an expenditure of funds resulting from the Contractor's failure to complete Work within the time specified in the Contract.

9.4 Beneficial Occupancy

9.4.1 The Owner shall have the privilege of Beneficial Occupancy and the use and benefit of designated areas, subdivisions or portions of the Project prior to completion and acceptance of the entire Project, provided that such Beneficial Occupancy shall not unduly interfere with the Contractor's operations nor unduly delay Contractor in completing the entire Work. Such occupancy and use shall be further subject to the provisions set forth herein.

9.4.2 In the event that the Owner desires to exercise the privilege of Beneficial Occupancy, Owner shall give reasonable notice to the Contractor. The Contractor shall then cooperate with the Owner in providing services and facilities reasonably required for the health, safety and comfort of the occupants and other parties lawfully present and/or entering or leaving the premises. Mutually acceptable arrangements shall be made between the Owner and the Contractor with regard to procedures, terms and conditions governing the operation and maintenance of such services and facilities as may be utilized for the benefit of the Owner. The Owner will assume proportionate and reasonable responsibility for operation of systems, equipment and/or utilities required to provide such services, in part or in total, including proportionate and reasonable expenses of operation incidental thereto. No such Beneficial Occupancy shall accelerate the commencement of any warranty period on any system but only on the particular components being utilized.

9.4.3 The Owner's Beneficial Occupancy or use of such designated areas, subdivisions, or portions of the Work shall not constitute acceptance of systems, materials, or elements of the Work which are not in accordance with the requirements of the Contract Documents; nor relieve the Contractor from its obligations to complete the Work; nor for responsibility for loss or damage due to or arising out of defects in, or malfunctioning of, systems, materials, equipment, or elements of the Work; nor from other unfulfilled obligations or responsibilities of the Contractor under the Contract. If, however, damage results solely from any act of the Owner, the Owner will assume its proportionate responsibility for such damage.

ARTICLE 10 PAYMENTS AND COMPLETION

10.1 Contract Sum: The Contract Sum is stated in the Agreement for Construction. Additional funds may be awarded by change order if scope is added.

10.2 Schedule of Values: Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The format and number of copies of such Applications for Payment shall be as directed by the Owner. This schedule, unless objected to by the Owner, shall be used as a basis for the Contractor's Applications for Payment.

10.3 Monthly Application for Payment

10.3.1 No later than the 3rd day of each month the Contractor shall submit to the Owner its monthly itemized Application for Payment. The Contractor shall not submit more than one pay application per month. The monthly Application for Payment shall be on AIA Document G702, or on a form approved by Owner, and supported by such data substantiating the Contractor's right to partial payment as the Owner may require; including but not limited to receipts, releases, and waivers of liens.

10.3.1.1 In applying for payment, the Contractor shall submit its monthly payment estimate based upon the approved schedule of work for the project, itemized in such form and

supported by such evidence as will show Contractor's right to the payment claimed. Claims made on account of materials delivered and suitably stored at the site, but not incorporated in the Work, shall be conditioned upon submission by the Contractor of bills of sale or such other procedure as will establish the Owner's title to such material or otherwise adequately protect the Owner's interest.

10.3.1.2 If the Contractor chooses to apply for payment for materials which cannot be incorporated into the Work, and cannot be stored on the site, Contractor may do so provided the following conditions are met: Unless otherwise agreed to by the Owner, the material shall be stored in a bonded or insured commercial warehouse within a geographic radius of 15 miles of the construction site, with the Owner being listed on the bond or insurance certificate as the sole beneficiary in the case of loss or damage to the stored materials. The Contractor shall be responsible for all storage, insurance or transportation costs associated with the materials. Conditions of insurance will apply to applicable portions of this Article **10.3.1.3.** Contractor shall provide the Owner with bills of sale or such other documents as will establish the ownership of the materials.

10.3.1.4 Reimbursement for pre-approved travel expenses, if any, will not exceed Federal Travel Regulations (FTR) standard rates for the applicable travel location. Lodging expenses will be reimbursed at FTR rates or the actual lodging cost, whichever is less; airfare shall be reimbursed at the actual cost of a coach class ticket. No additional burdens or overheads will be applied to travel expense reimbursements.

10.3.1.5 Applications for payment should be addressed to:

South Dakota Science and Technology Authority
630 East Summit Street
Lead, SD 57754

and submitted to the Owner's Representative. A scanned/emailed Application for Payment is preferred, submitted to AP@Sanfordlab.org. Paper copies of Applications for Payment are not necessary.

10.3.2 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article as "liens;" and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

10.3.3 Monthly applications received after the 3rd day of the month will be treated as if submitted on the 3rd day of the following month.

10.4 Progress Payments

10.4.1 Based upon the review of the Monthly Application for Payment, the Owner shall make progress payments to the Contractor in such amounts as the Owner reasonably determines are

properly due less the aggregate of previous payments in each case. Payment of amounts determined to be due by the Owner under each Monthly Application for Payment shall be due to the Contractor 20 days after the 15th of each month. The Owner shall at all times retain an amount sufficient to complete the Work. Contractor shall submit a lien waiver, in a form prescribed by and in accordance with applicable law, to the Owner following each Progress Payment.

10.4.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled reflecting any amounts actually withheld, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall not withhold retainage from its Subcontractors unless retainage is withheld from the Contractor by the Owner. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to his Sub-subcontractors in similar manner. Contractor shall require Subcontractors to submit lien waivers, in a form prescribed by and in accordance with applicable law, to Contractor following each Progress Payment to Contractor, and subsequent payments made to Subcontractors. Subcontractors' lien waivers to Contractor will be submitted to Owner.

10.4.3 The Owner shall, on request, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such Subcontractor.

10.4.4 The Owner shall have no obligation to pay or to see to the payment of any moneys to any Subcontractor except as may otherwise be required by law.

10.4.5 No Certification for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute acceptance or approval of any Work not in accordance with the Contract Documents.

10.5 Payments Withheld

10.5.1 The Owner may decline to certify the full payment of the amount requested by the Contractor in the monthly application to the extent necessary to reasonably protect the Owner. If the Owner is unable to certify payment in the amount of the Application, Owner will, within 10 days after receipt of the monthly application, notify the Contractor in writing the reasons a certification cannot be made. If the Contractor and the Owner cannot agree on a revised amount within 5 days of Owner sending written notice, the Owner will promptly issue a Certification for Payment for the amount for which certification may be made. The Owner may also decline to certify payment because of subsequently discovered evidence or subsequent observations. Owner may nullify the whole or any part of any Certification for Payment previously issued, and may withhold payment of all or any part of an Application for Payment, to such extent as may be necessary to protect the Owner from loss because of:

10.5.1.1 Defective work not remedied;

10.5.1.2 Third party claims filed or reasonable evidence indicating probable filing of such claims;

10.5.1.3 Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

10.5.1.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

10.5.1.5 Damage to the Owner or another contractor;

10.5.1.6 Reasonable evidence that the Work will not be completed within the Contract Time;

10.5.1.7 Failure to carry out the Work in accordance with the Contract Documents;

10.5.1.8 A lien or attachment is filed and such lien is not discharged within 5 days of demand from the Owner;

10.5.1.9 Failure of the Contractor and/or of the mechanical or electrical Subcontractors to comply with the mandatory requirements for maintaining "up-to-date" Record Drawings;

10.5.1.10 Incomplete or otherwise inadequate Application for Payment; or

10.5.1.11 Reasonable evidence that the Contractor is in material breach of its obligations under the Contract.

10.5.2 When the above grounds in Article 10.5.1 are removed, payment shall be made for amounts withheld because of them.

10.6 Substantial Completion

10.6.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner, is Substantially Complete as defined in Article 9.1.3 the Contractor shall prepare for submission to the Owner a list of items to be completed or corrected. The failure to include any item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Owner on the basis of an inspection determines that the Work or designated portion thereof is Substantially Complete, the Owner will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities and damage to the Work, and shall fix the time within which the Contractor shall complete the items listed therein. Warranties and Guarantees required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

10.6.2 Upon Substantial Completion of the Work or designated portion thereof and upon application and certification by the Contractor, the Owner shall make payment, reflecting adjustment for defective or incomplete work, if any, for such Work or portion thereof, as provided in the Contract Documents. Double the amount necessary to complete the Work may be retained by the Owner.

10.7 Final Completion and Final Payment

10.7.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, if Owner determines that the Work has been completed in accordance with the terms and conditions of the Contract Documents, the entire balance will be determined to be due and payable to the Contractor.

10.7.2 The final payment shall not become due until the Contractor submits to the Owner (1) An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or will be paid with Owner's final payment to Contractor and that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests; (2) A general release executed by Contractor waiving, upon receipt of final payment by Contractor, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment, and an agreement to indemnify, defend and hold Owner harmless from and against any claims made by suppliers, Subcontractors, Sub-Subcontractors or others for work or material provided in connection with the Project or the Work; (3) All as-built documents, operating manuals, warranties and other deliverables required by the Contract Documents. All guarantees and warranties required by the Contract Documents shall include an assignment from the Contractor, Subcontractors, vendors, suppliers and manufacturers to the Owner, as well as a list of the names, addresses and telephone numbers of all subcontractors and any other entities providing these guarantees or warranties.

10.7.3 Owner shall make final payment of all sums due to the Contractor 30 days after the completion and acceptance of the project by the Owner and Contractor's compliance with Article 10.7.2 above.

10.7.4 The acceptance of final payment by the Contractor shall constitute a complete and unconditional waiver and release of any and all claims by the Contractor of whatever nature, and regardless whether they are then known or unknown, and a complete and unconditional release of the Owner and every person for whom the Owner is responsible for any and all matters related to the Contract or otherwise, except those claims which have been made in writing and identified by the Contractor as not having been settled at that time. After final payment, Contractor shall submit to Owner a final lien waiver in a form prescribed by and in accordance with applicable law.

ARTICLE 11 CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY

11.1 Contractor's Responsibility for Project Safety: Contractor's responsibility for project safety is attached hereto as Exhibit B, and incorporated herein by reference.

ARTICLE 12 INSURANCE

12.1 During the term of this Contract, Contractor shall maintain in effect at all times, and provide proof of such coverage to the Authority, insurance as described on the attached Exhibit A, which is incorporated herein by this reference.

12.2 Prior to the commencement of work, Contractor shall submit certificates of insurance policies to the Authority for review and approval.

12.3 By executing this Contract, Contractor authorizes the Authority to make direct inquiry of Contractor's insurer or insurance agent concerning the status of the insurance required by this Agreement.

ARTICLE 13 CHANGES IN THE WORK

13.1 Change Orders: This Contract may be modified or amended only in writing in the form of a Change Order signed by both parties. A Change Order is a written order to the Contractor signed by the Owner, 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 its agreement therewith.

13.2 The Owner, 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.

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

13.3.1 By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. 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, with each such subdivision further broken down into the following elements:

13.3.1.1 Number of man-hours of labor to be performed by each trade, craft or classification of employee involved in the proposed change.

13.3.1.2 The hourly rate for each such trade, craft or classification of employee, including the appropriate wage supplement for social security, old age and unemployment contributions, and such other employee benefits as may be established by statute or by written agreement negotiated by and between organizations representing such crafts or trades and representatives of their employers.

13.3.1.3 The estimated quantity of each item or element of material and/or equipment entering into the proposed change.

13.3.1.4 The unit cost of each such item or element of material and/or equipment.

13.3.1.5 Rental of items or units of construction plant and equipment with a schedule of the period or periods of use of such item or unit in connection with the proposed change.

13.3.1.6 Rental terms and rates for each such item or unit of construction plant and equipment. Rental for equipment shall be based on the following:

13.3.1.6.1 Hourly rental rates shall be based on 80% of the applicable rates for equipment listed in the 'Green Book', latest edition, (published by the Associated Equipment Distributors, 615 West 22nd Street, Oakbrook, Illinois, 60523).

13.3.1.6.2 Hourly rental rates for equipment not listed in the 'Green Book' shall be based on 100% of the applicable rates for equipment listed in the 'Blue Book', latest edition (published by Dataquest, 1290 Ridder Park Drive, San Jose, California, 95131).

13.3.1.6.3 Hourly rental rates determined from the 'Green Book' or 'Blue Book' includes all items of cost and expense to the Contractor, including, but not limited to, gas, oil, maintenance, repairs, insurance, and transportation to and from construction site.

13.3.1.7 Power and/or other utilities entering into the proposed change.

13.3.1.8 Rates and terms applicable to such power and/or other utilities.

13.3.1.9 Additional premiums, if applicable, for the extension of insurance and bond coverages as required herein to the proposed change.

13.3.1.10 Applicable federal, state and local taxes.

13.3.1.11 Indirect Cost and Fee computed as a percentage override applied to net cost in accordance with the provisions of this Article.

13.3.2 By unit prices stated in the Contract Documents or subsequently agreed upon;

13.3.3 By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;

13.3.4 By the method provided in Article 13.3.1.1 through 13.3.1.11.

13.3.5 The Contractor shall require that the itemized analysis of each portion of the proposed change to be performed by a Subcontractor and/or Sub-subcontractor be prepared by each such Subcontractor and/or Sub-subcontractor in accordance with the format established herein. Copies of all such itemized analyses shall be appended to the Contractor's itemized analysis of the proposed change in the Work.

13.3.6 For purposes of calculating Indirect Cost and Fee in relation to Change Orders, the net cost of a proposed change in the Work shall include, and unless otherwise agreed in writing prior to the performance of the proposed change, shall be limited to the fair and reasonable estimated cost of the total of all of the individual items, elements, or components involved in proposed change in the Work (including adds and deducts) as set forth in Articles 13.3.1.1 through 13.3.1.11.

13.3.7 For each portion of a proposed net additive change in the Work to be performed directly by the Contractor, the cost to Owner shall include an increment for the Indirect Cost and Fee of the Contractor associated with such portion of proposed change of 8% of the net cost of the Work.

13.3.8 For each portion of a proposed net additive change in the Work to be performed directly by a Subcontractor, in addition to an increment or increments for Subcontractor's Indirect Cost and profit associated therewith of 8%, the cost to the Owner shall include a supplementary increment or increments for Contractor's Indirect Cost and Fee associated therewith of 6% of the net cost of the Work.

13.3.9 In computing Indirect Cost and Fee, the percentage for Indirect Cost and Fee shall be taken on basic wage only. No percentage override shall be taken on social security, old age and unemployment contributions, contributions to Industry funds, education, and Training Funds and/or similar wage supplements, contributions or benefits.

13.3.10 Items, elements or components of changes in the Work or proposed changes which shall be classified as Indirect Cost and excluded from net cost shall include, but shall not necessarily be limited to:

13.3.10.1 All classifications of administrative, supervisory, and clerical personnel not engaged manually in the performance of the Work, including timekeepers, clerks, watchmen, and security personnel.

13.3.10.2 Miscellaneous expense, job burden, and/or other generalized categories of cost or expense.

13.3.10.3 Use of small tools.

13.3.10.4 Insurance other than insurance coverage required herein.

13.3.11 In changes in the Work involving both additions to and deductions in the Work, or any portion or element thereof, or the relocation or rearrangement of items, portions or elements thereof, or the substitution of any items, portions or elements thereof, such additions and deductions shall be balanced and the Contractor's Fee computed on the same basis for deductions as well as additions. If at the request of the Owner a number of unrelated changes in the Work are set forth individually, summarized and totaled in a single Change Order for reasons of administrative convenience, the amount or amounts of individual deductive changes in the Work set forth therein shall, in any event, be balanced against the amount or amounts of individual additive changes in computing the Contractor's Fee for the purpose of adding and deducting.

13.3.12 If none of the methods set forth in Articles 13.3.1, .3.2 or .3.3 is agreed upon, the Contractor, provided it receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Owner 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, and also under Articles 13.3.3 and .3.4 above, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order, at the end of each day, and will submit to the Owner: (a) daily time slips, submitted to Owner on a daily basis, showing the name of each worker employed on such work, the number of hours which the worker is employed thereon, the character of the worker's duties, and the wages and benefits to be paid to the worker and on his behalf, and (b) a memorandum of the equipment used in the performance of such Work, together with the rental claimed therefor. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor,

including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the basis of amounts reasonably estimated by the Owner. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Owner and agreed to by the Owner. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance or credit for the Contractor's Fee shall be figured on the basis of the net increase, or decrease, if any, with respect to that change.

13.4 Differing Site Conditions

13.4.1 The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Owner 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.

13.4.2 The Owner 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 this Article, provided that the Work has been ordered in writing by Owner as provided in Article 13.1 above. There shall be included in the adjustment to the Contract Sum under the preceding sentence a reasonable allowance for any extraordinary increase in Indirect Cost borne by the Contractor because of such additional work.

13.5 Claims for Additional Cost

13.5.1 If the Contractor wishes to make a claim for an increase in the Contract Sum, Contractor shall give the Owner a written notice thereof within 10 days after the occurrence of the event giving rise to such claim except where claim is made in connection with deviations in Shop Drawing or Sample submittals, in which case claim shall be made in writing to the Owner concurrently with such submittals. This notice shall be given by the Contractor before proceeding to execute the Work. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

13.5.2 If the Contractor claims that additional cost is involved because of, but not limited to, (1) any order by the Owner to stop the Work pursuant to Article 4.2 where the Contractor was not at fault, or (2) any deviation in Shop Drawing or Sample submittals from the requirements of the Contract Documents, the Contractor shall make such claim as provided in Article 13.5.1.

ARTICLE 14 UNDERGROUND WORK

14.1 Notification of Hazards: Contractor is hereby notified that the project involves work in a former underground gold mine. The surface property related and adjacent to the underground property contains heavy machinery, high-voltage electrical connections and conduits, open catwalks, and other elevated walkways, hidden hazards of tripping or falling and numerous other serious risks of health, life and

safety, and risks of damage to property. The underground property also includes and contains heavy machinery, high-voltage electrical connections and conduits, open catwalks and other elevated walkways and hidden hazards of tripping or falling. Entering the underground property involves a substantial risk of underground fires, underground floods, collapse, failure of lifts and hoists, suffocation, being trapped, being crushed to death and numerous other serious risks to health, life and safety, and risks of damage to property.

14.2 Acknowledgement of Risk and Release: All persons going underground, including Contractor, Contractor's officers, directors, employees, agents, consultants, subcontractors and representatives, and each of their officers, directors, employees, agents, consultants, subcontractors and representatives must execute the Acknowledgement of Risk and the Release, Agreement Not to Sue and Waiver in the forms attached hereto, marked collectively as **Exhibit G & H** and incorporated herein by this reference.

14.3 Indemnification of Homestake Indemnified Parties: Contractor, for itself and its officers, directors, employees, agents, representatives and assigns, will and does hereby release, discharge and agree not to sue the Homestake Indemnified Parties with respect to any damage or injury to any person (including natural persons, corporations, limited liability companies and other entities) or property caused in whole or in part by the Contractor or its officers, directors, employees, agents, representatives, sub-contractors and subsuppliers. For the purposes of this Agreement, the term "Homestake Indemnified Parties: means Barrick, Homestake and the Affiliates of Barrick and Homestake, and each of its and their Representatives.

ARTICLE 15 UNCOVERING AND CORRECTION OF WORK

15.1 Uncovering of Work

15.1.1 If any portion of the Work should be covered contrary to the request of the Owner, or the requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for Owner's observation and shall be replaced at the Contractor's expense.

15.1.2 If any other portion of the Work has been covered which the Owner has not specifically required to observe prior to being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by the Owner or a separate contractor as provided in Article 7.1, in which event the Owner shall be responsible for the payment of such costs.

15.2 Correction of Work

15.2.1 The Contractor shall promptly correct all Work rejected by the Owner as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Owner's additional services and the Owner's fees made necessary thereby.

15.2.2 If, at any time after the Owner's acceptance of the fully completed Project, any of the Work is found not to have been provided in conformance with the Contract Documents, or, if within one year after such acceptance any of the Work, is otherwise found to be faulty or defective, the Contractor shall correct it promptly after receipt of a written notice from the Owner to do so. The Contractor shall also repair or replace any part of the Work which is damaged by the defective

condition or the remedial Work. This obligation shall survive termination of the Contract, subject to the terms of any applicable statute of limitations. The Owner shall give such notice promptly after discovery of the condition.

15.2.3 The Contractor shall remove from the Site all portions of the Work which are defective or non-conforming and which have not been corrected under Articles 5.4.1, 14.2.1 and 14.2.2, unless removal is waived by the Owner.

15.2.4 If the Contractor fails to correct defective or non-conforming Work as provided in Articles 5.4.1, 15.2.1 and 15.2.2, the Owner may correct it in accordance with Article 4.3.

15.2.5 If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within 10 days thereafter, the Owner may upon 10 additional days written notice sell such Work at auction or a private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due to the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand.

15.2.6 The Contractor shall bear the cost of making good all work of the Owner or separate contractors destroyed or damaged by such correction removal.

15.2.7 Nothing contained in this Article shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Article 5.4 hereof. The establishment of any time period prescribed by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor liability with respect to Contractor's obligations other than specifically to correct the Work.

15.3 Acceptance of Defective or Non-Conforming Work: If the Owner prefers to accept defective or non-conforming Work, Owner may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 16 TERMINATION OF THE CONTRACT

16.1 Termination by the Contractor: If the Work is stopped for a period of 90 days under an order of any court or any public authority having jurisdiction, or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Contractor or Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, then the Contractor may, upon 7 additional days written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed to the termination date, together with reasonable demobilization costs. The Contractor shall have no other right to terminate the Contract for any reason.

16.2 Termination by the Owner

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

Prior to termination of the Contract, the Owner shall give the Contractor and its surety 10 calendar days written notice, during which the Contractor and/or its surety may rectify the cause of the termination. If rectified to the satisfaction of the Owner within said 10 days, the Owner may rescind its notice of termination. If not rectified, the termination for cause shall become effective at the end of the 10-day notice period. In the alternative, the Owner may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and its surety that the causes of termination will be remedied in a time and manner which the Owner finds acceptable. If at any time more than 10 days after the notice of termination, the Owner determines that the Contractor or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

Notice of termination, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in South Dakota or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within 3 days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

Upon termination of the Contract, the Owner shall take possession of the premises and of all materials, tools, appliances, equipment, and other facilities on the Project, wherever stored, and may finish the Work by whatever method it may deem expedient. The Contractor shall assign Subcontracts to the Owner or to a designated substitute contractor promptly upon request. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished and the Owner has determined its damages owing to the Contractor's default.

16.2.2 If the costs of finishing the Work, including services made necessary by the Contractor's default, and all other damages suffered by the Owner on account of the Contractor's default, exceed the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner, and this obligation for payment shall survive the termination of the Contract. If the costs of finishing the Work are less than the unpaid portion of the Contract Sum, the Owner shall pay the unpaid balance of any amount properly owing to the Contractor for all Work executed to the date of termination, less actual damages. The Owner will not be obligated to pay any further amount on account of Direct Cost, Indirect Cost or Fee.

16.2.3 If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner.

16.3 Termination for Convenience

16.3.1 The Owner 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 Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, 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, Owner shall have no further obligations to Contractor of any nature.

16.3.2 In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.

EXHIBIT A

INSURANCE REQUIREMENTS

A. Minimum Insurance: Prior to commencement of Work, Contractor will procure and maintain the following insurance:

1. Commercial general liability insurance with limits not less than \$5 million per occurrence. Such insurance shall name as additional insureds Barrick Gold Corporation, Homestake Mining Company of California, and the Affiliates of Barrick and Homestake and each of its and their representatives; the South Dakota Science and Technology Authority, its officers, agents, employees and representatives the Fermi Research Alliance, LLC, the University of Chicago, Universities Research Association, Inc., its officers, agents, employees and representatives, and the United States of America. All additional insureds coverage must include current and completed operations.
2. Business automobile liability insurance with limits not less than \$1 million per occurrence. Such insurance shall include coverage for owned, non-owned and hired automobiles.
3. Workers compensation insurance as required by South Dakota law.

B. Special Provisions Applicable to All Coverages: Self-insured retentions and/or deductibles greater than \$50,000.00 must be declared and approved by the Authority.

C. Special Provisions Applicable to the Commercial General Liability Insurance: The commercial general liability policy shall:

1. Provide contractual liability coverage at least as broad as Insurance Services Office (ISO) form CG 00 01 12 07, or its equivalent.
2. Waive the insurer's right of subrogation against the Homestake Indemnified Parties.
3. State that it is primary and non-contributory and shall apply without consideration for other policies carried by the Homestake Indemnified Parties.
4. Include a provision that the insurer will not raise any coverage defense based on the statutory immunity of the State of South Dakota, the South Dakota Science and Technology Authority, or the Homestake Indemnified Parties.

D. Notice of Cancellation or Material Change in Coverage/Condition: The Contractor or Project Sponsor must provide 30 days' notice of cancellation/material change, reserving the right to obtain replacement coverage if Contractor does not and deducting the cost from the contract total.

E. Evidence of Insurance: Prior to commencement of Work, the Contractor or Project Sponsor shall furnish the South Dakota Science and Technology Authority with certificates evidencing compliance with the insurance requirements above. Contractor agrees to provide complete, certified copies of all required insurance policies if requested by the Authority.

F. Acceptability of Insurers: Insurance shall be placed with insurers acceptable to the South Dakota Science and Technology Authority.

G. Subcontractors: Contractor shall require subcontractors to provide insurance that complies with the requirements stated herein.

EXHIBIT B

ENVIRONMENT, HEALTH AND SAFETY REQUIREMENTS

1. Contractor recognizes the importance of performing the Work in a safe and responsible manner so as to prevent damage, injury, or loss to individuals, the environment, and the Work itself, including materials and equipment incorporated into the Work or stored on-site or off-site. Contractor assumes responsibility for implementing and monitoring all Environment, Safety & Health(ESH) precautions and programs related to the performance of the Work.

2. Contractor and Subcontractors shall comply with all legal and Owner-specific reporting requirements relating to ESH set forth in the Contract Documents. Contractor will immediately report orally, and in writing within one day, any ESH related injury, loss, damage, or accident arising from the Work to Owner's Representative and, to the extent mandated by legal requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work. Contractor and its Subcontractors will immediately report to the Owner's Representative all non-incidentals spills, and all other significant impacts to the environment (soil, water, air) in performance of the Work. Contractor will also immediately notify the Owner of any failure to comply with state and federal environmental laws, rules, and regulations.

3. Contractor's responsibility for ESH under this Article is not intended in any way to relieve Subcontractors and Sub-subcontractors of their own contractual and legal obligations and responsibilities.

ESH Requirements and Coordination

4. Safety and protection of the environment are of the utmost concern on this Contract. Safety in this context refers to the health and safety of people and the protection of the environment. Nothing contained herein relieves the Contractor from complying with all applicable standards and regulations found in 29 CFR Part 1926 (the OSHA construction standard), 40 CFR Parts 261-265 (solid and hazardous waste management), 40 CFR Part 112 (oil pollution control), and ARSD 74:52:01 through 74:52:11 (storm water), as applicable. Site specific safety requirements are defined in the "Contractor Safety Manual," located at: <https://www.sanfordlab.org/esh>. MSHA compliance may be acceptable after review.

5. The Contractor will address the safety requirements defined herein and in the Owner's Contractor Safety Policy. Contractor costs associated with the implementation of the requirements will be borne by the Contractor. Safety deficiencies discovered after the award will be remedied at no cost to the Owner and may at the Owner's discretion be deducted from the Contract amount.

6. The Contractor shall have an ESH Representative (also known as Safety Officer or SO), approved by the Owner, present on the Project at all times when Work is physically being performed. The SO may have other minor duties, but the position's primary role is to oversee safety of the worksite and Work being performed by the Contractor, as well as that of its Subcontractors. If shift work will be utilized, the Contractor must have a SO for each shift. The training requirements for the SO are the same as the lead and are as follows:

- The SO shall have 30 hr OSHA training or equivalent, with documented experience as a SO under similar conditions. Underground safety experience and training (e.g. MSHA part 48) is highly desirable.
- The SO shall have the authority to stop work.
- The SO will be certified in CPR and First Aid.
- The SO is responsible for administering the Contractor's ESH program.
- In addition to routine daily inspections, the SO will conduct a documented weekly ESH inspection of the work site.
- The SO will escort the Owner's ESH staff on ESH inspections, conducted by the Owner's ESH staff.

- The SO must be trained with respect to 40 CFR Part 112 (oil pollution prevention), 40 CFR Part 261-270 (solid and hazardous waste management), and ARSD 74:52:01 through 74:52:11 (storm water), if applicable.
- The Contractor will supply a weekly ESH report to the Owner, detailing any ESH related items, including OSHA recordable injuries, first aid cases, environmental releases, near misses, and a copy of the weekly EHS inspection.

7. The Contractor shall have on site at all times when work is being performed at least one individual certified in CPR and First Aid in addition to the SO.

8. The Contractor, if performing work underground, must have an individual trained and qualified as a Guide for each area that the contractor will be working. The Guide must be onsite with the workers at all times that workers are underground. The guide training will be coordinated with SDSTA and will consist of twenty-four hours of training and guide walks.

9. The Contractor must have a documented Site Specific Contractor Environment, Health and Safety Program (CEHSP) in place and accepted by the Owner before work will be authorized to start. This program must be consistent with the requirements in the Owner's Contractor Safety Policy. This plan shall:

- Incorporate the requirements identified in the Contractor Safety Policy.
- Include an Area Hazards Analysis.
- Contain a Job Hazard Analysis (JHA) for each definable work element.

The CEHSP will be based on the hazards inherent to the Means and Methods adopted by the Contractor and its associated work environment. The scope of work will dictate the required program elements for this Contract. The following are examples of program elements that the Contractor may include in its CEHSP:

- Electrical Safety
- Fall Protection
- Personal Protective Equipment (PPE)
- Control of Hazardous Energy (Lock Out/ Tag Out)
- Confined Space
- Hotwork (Grinding and Burning)
- Hoisting and Rigging
- Hearing Conservation (Includes Industrial Hygiene Monitoring and Medical Baselines, if appropriate)
- Respiratory Protection (Includes Industrial Hygiene Monitoring and Medical Baselines, if appropriate)
- Emergency Response
- Fire Protection and Prevention (Contractor must provide its own extinguishers)
- Blood Borne Pathogens
- Hazardous Communications
- Machine Safeguarding
- Powered Industrial Trucks
- Industrial Hygiene
- Material Handling
- Spill Prevention, Control, and Countermeasures (Contractor to provide all associated equipment)
- Storm Water Management
- Solid and Hazardous Waste Management
- Air Pollution Control
- Scaffolding

If the Contractor chooses to adopt one or more specific elements of the Owner's ESH program, it must adopt that element in its entirety.

10. The Contractor is expected to follow a work planning process that is acceptable to the Owner. The work planning process must be conducted and documented prior to the start of work. The work planning process follows these steps and is documented in the form of a Job Hazards Analysis (JHA):

- Define the scope of the work.
- Analyze hazards in a step by step fashion.
- Develop and implement hazard controls and regulatory compliance.
- Perform the work and monitor the effectiveness of the hazard controls.
- Provide feedback to improve the process (e.g. routine workplace inspections, auditing compliance during work performance, job briefing postings, lessons learned, etc).

A JHA, acceptable to the Owner, must be completed and reviewed with the individual expected to perform the Work prior to Work starting on a specified task. The SO is expected to review all JHAs. Copies of JHAs must be present at the location where Work is being performed and accessible to the individuals performing the Work and to Owner representatives.

11. The Contractor will conduct a crew work planning meeting (tailgate/toolbox talk), including, when necessary, Subcontractor employees, prior to the beginning of each shift. This talk will include the plan of work for the day, a review of hazards and potential regulatory issues, and the review of applicable JHAs.

12. The Contractor is responsible for identifying the need for Qualified and/or Competent Persons for specific tasks as defined in 29 CFR 1926.

13. Contractor shall provide all common Personal Protective Equipment (PPE) required for the Work (hard hats, safety toe boots, safety glasses) unless otherwise stated in the Scope of Work. During the bid process, bidder shall include as a separate line item any PPE unique to the scope. Contractor included in its bid a separate line item for any PPE unique to the scope. Owner shall notify the Contractor in the Notice to Proceed of its intent to reduce the contract value if Owner elects to provide this PPE. Unique PPE required for any *underground work* shall include:

- W65 Self Rescuers (must be maintained according to MSHA requirements) (always required when working underground)
- Gas Tester(s) (M40M or equivalent) (will be required for all underground work)
- Cap lamps (may be required depending on location of underground work)

14. The Contractor is responsible for screening all Subcontractors with respect to safety and to adopt a safety selection process consistent with requirements defined herein. In addition, Contractor is responsible for flowing down all ESH requirements of the Contract to its Subcontractors, including monitoring and enforcing compliance.

15. The Contractor is responsible for assuring that all Contractor employee safety training is completed in compliance with Owner guidelines, policies and 29 CFR 1926. The following training is required for all Contractor personnel before they start work:

- Documented compliance with OSHA 1910 and 1926 along with training requirements as applicable is required. Note that current MSHA training certification is also acceptable.
- Site Specific ESH Orientation and Training (plan for a 1 to 2hour on-site training course conducted by Owner's representatives).
- Any other training requirements identified by the Contractor in its CEHSP or by the Owner and communicated to the Contractor, during the bid process and Site Specific ESH Program review.

16. If the Owner perceives the Contractor has created or is exposed to an imminent danger or a non-compliance situation, the Owner will suspend work until safe conditions are re-established. Such work stoppages will be at the expense of the Contractor and will not add time to the completion date of the Contract.

17. In the event of an incident, Contractor will conduct an incident investigation in accordance with the Owner's policies. The investigation will include preparing a written report summarizing the results of the investigation, corrective actions taken to prevent a reoccurrence, and any lessons learned. The Owner may at its discretion participate in and facilitate the incident investigation. Time and expense incurred by Contractor performing an incident investigation will be at the Contractor's expense.

18. The Contractor shall regularly inspect, test, and calibrate as necessary all equipment, machinery, tools, or other items furnished by the Owner that are employed in Contractor's Work. Contractor shall take reasonable precautions to avoid damage to facility structures and utilities. If apparent defects are found in Owner-provided materials, Contractor shall promptly notify Owner of such defect(s) in writing. If Contractor fails to make such examination or fails to report an apparent defect in such item or items, Contractor shall not be entitled to any compensation for downtime or delays or schedule extensions associated with repair or replacement of the defective item or items.

19. The Contractor shall manage all waste in performance of the Work in compliance with Owner's Policies and Procedures and state and federal law. Further, the Contractor shall minimize the generation of all wastes and hazardous substances. All disposal and clean-up cost of spills of hazardous substances and non-hazardous debris/waste generated by the Contractor in the performance of the Work will be at the expense of the Contractor.

20. Flammables (defined in 30 CFR Part 52, Subpart A) are not allowed underground. Special consideration may be negotiated with the Owner if Work cannot be completed without flammable materials. This special consideration **must be would have been** negotiated during the bidding process. Flammables used on the surface are to be stored in engineered flammable cabinets or in containers with a minimum 1-hour fire resistance.

21. All chemicals to be used at the Owner's facility must be approved by the Owner and Safety Data Sheets (SDS) must be maintained by the Contractor.

22. Tier 4 engines are required on the Owner's site for underground use. Lower Tier equipment may be allowed on site but only with Owner's permission. All diesel equipment must be approved by the Owner prior to usage. An equipment list with associated Tier designations and fuel types **is to be was** provided to the Owner in the bid package.

23. Smoking or the use of tobacco products is not allowed within the boundaries of the Owner's facility.

24. Contractor acknowledges that periodic drills and exercises are required by Owner to validate the adequacy and effectiveness of Owner's Emergency Response Plan. Contractor also recognizes that such drills and exercises enhance its employees' understanding of Owner's Emergency Response Plan. Contractor agrees to participate in quarterly drills, which may or may not be scheduled in advance, during the term of this Contract. It is understood that Contractor will not be entitled to any additional compensation for participating in these drills or exercises.

25. Contractor agrees to assess whether Contractor's employees have the physical, mental, and emotional capacity to perform assigned tasks competently, and in a manner that does not unreasonably threaten safety, health, or property, including participation in emergency procedures applicable to Contractor's work location.

26. Owner reserves the right to restrict or deny access of any Contractor employee to the work location.

27. Contractor shall report the hours worked on site by Contractor's employees on a monthly basis to ESH Safety Coordinator Michelle Andresen (mandresen@sanfordlab.org) and to the SDSTA Representative named in the Contract. Hours should be emailed to both Ms. Andresen and the SDSTA Representative no later than the 3rd day of the month for hours worked the previous month.

EXHIBIT C

SCOPE OF WORK

(Insert – usually from RFP)

EXHIBIT D

CONTRACTOR'S PROPOSAL

To be inserted upon selection of Contractor

EXHIBIT E
Compliance with Federal Acts

GENERAL PROVISIONS FOR FIXED PRICE CONSTRUCTION

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CLAUSE 1 – DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

- "CFR" means the U.S. Code of Federal Regulations.
- "DEAR" means the DOE Acquisition Regulation.
- "DOE" means the U. S. Department of Energy.
- "FAR" means the Federal Acquisition Regulation.
- "Government" means the United States Government.
- "LBNL" means the Lawrence Berkeley National Laboratory.
- "Patent Counsel" means the DOE Patent Counsel.
- "Subcontract" means the subcontract between the SDSTA and the Subcontractor which includes these General Provisions.
- "Subcontractor" means the party who has entered into this Subcontract with the SDSTA, as identified in the Subcontract.
- The lower case term "subcontractor" means the Subcontractor's subcontractor(s).
- "University" means The Regents of the University of California, acting through the LBNL.

CLAUSE 2 – SCOPE OF SUBCONTRACT

The scope of the Subcontract shall be limited to the acquisition of fixed price construction.

The Subcontract is entered into under the SDSTA's Prime Contract No. DE-AC02-05CH11231 with DOE for management and operation of LBNL and performance of research and related work.

CLAUSE 3 – PAYMENT BOND

(Applicable if the Subcontract amount is over \$25,000)

Before a Notice to Proceed is issued or before the subcontractor is allowed to start work, the Subcontractor shall furnish to the SDSTA on the Laboratory's forms and naming the Regents of the University of California and the United States of America as obligee a Payment Bond or other acceptable alternative payment protection (alternative is only acceptable if subcontract amount is \$100,000 or less), guaranteeing the payment of claims of laborers, mechanics, material providers, and others. Said bond shall be in the form included with the Subcontract and with sureties acceptable to the SDSTA. The cost therefor shall be paid by the Subcontractor.

The penal amount of the Payment Bond or alternative payment protection shall be 100% of the original Subcontract price and, if the Subcontract price increases, an additional amount equal to 100% of the increase.

CLAUSE 4 – PERFORMANCE BOND

(Applicable if the Subcontract amount is \$100,000 or more)

Upon the execution of this Subcontract the Subcontractor shall furnish to the University a Performance Bond, guaranteeing the faithful performance of this Subcontract. Said bond shall be in the forms hereto

attached and with sureties approved by the SDSTA. The cost therefor shall be paid by the Subcontractor.

The penal amount of the Performance Bond shall be one hundred percent (100%) of the original Subcontract price and, if the Subcontract price increases, an additional amount equal to 100% of the increase.

CLAUSE 5 – SURETIES AND ADDITIONAL PROTECTION

The SDSTA shall approve any surety company which, at the time of execution of this Subcontract, is listed in the U.S. Treasury Department list of Certified Companies (Circular 570), available at: <http://www.fms.treas.gov/c570/>.

The Subcontractor shall promptly furnish additional security as may be required from time to time if the SDSTA determines such additional security is necessary to protect the interest of the SDSTA and the Government and of persons supplying labor or materials under this Subcontract.

CLAUSE 6 – WALSH-HEALEY PUBLIC CONTRACTS ACT

If this subcontract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$15,000.00 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

CLAUSE 7 – ASSUMPTION OF RISK

(Applicable to Subcontracts under \$200,000)

Subcontractor shall and does hereby assume all risk and responsibility for damage to any materials used or work done in connection with the work from any cause or causes whatsoever, including fire, earthquake and storm, prior to the completion and acceptance of the work, and shall at Subcontractor's own cost and expense, repair and/or replace any work or materials damaged or destroyed. Since no form of property insurance is to be carried by SDSTA or Government, it will be the responsibility of Subcontractor to provide its own protection in this respect, and the cost of such protection shall be deemed to be included in the Subcontract price. This clause shall have no applications to public liability for a nuclear incident as defined in the Atomic Energy Act of 1954, as amended, to the extent the Subcontractor is indemnified under said law.

CLAUSE 8 – ASSIGNMENTS

The administration of this Subcontract is assignable by the SDSTA to the Government or a successor-in-interest for management and operation of LBNL.

Except as to assignment of payment due hereunder, the Subcontractor shall have no right, power or authority to sell, mortgage, transfer or assign this Subcontract, any portion hereof, any interest herein, or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the SDSTA.

Neither this Subcontract nor any interest created thereby or any claim here under shall pass by operation of law or otherwise to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors, or to any other party or parties, except as expressly authorized by the SDSTA. The breach of the foregoing prohibition, whether voluntary, or by operation of law, by any process or proceeding of any court or by attachment, execution, proceeding in reorganization, composition, insolvency, or bankruptcy, whether voluntary or involuntary, shall be cause for default under this Subcontract.

CLAUSE 9 – DISPUTES AND CLAIMS

A. Submittal Of Claim

1. Except as otherwise provided in the Subcontract, any dispute between the Subcontractor and the SDSTA arising out of this Subcontract, or its breach, which is not informally disposed of by agreement shall be promptly submitted by the Subcontractor to the SDSTA as a claim. The term "claim," as used in this clause, shall mean a written request for adjustment or interpretation of Subcontract terms, payment of compensation, extension of time, or other relief with respect to the terms of the Subcontract submitted by the Subcontractor to the SDSTA with adequate supporting data and including a demand for a decision by the SDSTA. The term "Adequate supporting data," as used in this clause, shall mean a detailed statement of the basis and supporting reasons for the asserted entitlement and an itemized breakdown of any adjustment or compensation sought.

2. If the total amount of the compensation sought exceeds \$100,000, the Subcontractor shall certify, at the time of submission as the claim, as follows:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the Subcontract compensation for which the Subcontractor believes the SDSTA is liable.

B. Decision of SDSTA

1. The SDSTA shall review the facts pertinent to the claim and render a written decision. A copy of the decision shall be furnished to the Subcontractor by certified mail, return receipt requested, or any other method that provides evidence of receipt.

2. The SDSTA shall use its best efforts to issue a written decision on a claim within thirty (30) days after receipt of the claim. If a decision is not issued within the stipulated period, the SDSTA shall notify the Subcontractor of the time within which the decision will be made. This time period shall depend on the size and complexity of the claim and the adequacy of the Subcontractor's supporting data and other relevant factors. If a decision is not issued on any claim within ninety (90) days after the SDSTA's receipt of the claim, the claim shall be considered to have been denied.

C. Informal Resolution and Mediation

The parties shall attempt to resolve any claim in good faith, by direct, informal negotiations. Pending resolution of the claim, the Subcontractor shall proceed diligently with the performance of this Subcontract, in accordance with its terms and conditions.

The parties, upon mutual agreement, may seek to mediate any claim through the assistance of a neutral third party at any time, but they must seek such assistance no later than 120 days after the date of the SDSTA's written decision on the claim. The cost of mediation shall be shared equally by both parties. If requested by both parties, the neutral third party may offer a non-binding opinion as to a possible settlement.

All such informal negotiations between the parties and discussions with a neutral third party shall be confidential and treated as

compromise and settlement negotiations, for the purposes of application of rules of evidence.

D. Arbitration

1. The decision of the SDSTA on any claim may be arbitrated by the Subcontractor. Any written demand for arbitration must be mailed or otherwise furnished to the San Francisco Office of the American Arbitration Association, 417 Montgomery Street, San Francisco, CA 94104-1113. A copy of the demand for arbitration shall be furnished to the SDSTA.

2. The demand shall (i) contain a statement setting forth the nature of the claim, a copy of the SDSTA's decision, and a copy of this clause, and (ii) identify this Subcontract by title and number, state the amount involved, if any, and the remedy sought. The demand shall be filed together with the appropriate filing fee, as provided in the AAA Construction Industry Arbitration Rules.

3. No demand for arbitration on a dispute may be made unless the Subcontractor has submitted a claim to the SDSTA and until (i) the SDSTA has issued a written decision, or (ii) ninety (90) days after the date of the SDSTA's receipt of a claim, if a decision has not been issued by that date.

4. Timely notice of an intention to arbitrate shall be a prerequisite to an effective election to arbitrate. Except as otherwise provided in this clause, the decision of the SDSTA shall be final and conclusive unless the Subcontractor delivers to the SDSTA a written notice of the intention to arbitrate, by certified mail, return receipt requested, or any other method that provides evidence of receipt, within:

- 30 days from the date the Subcontractor receives the SDSTA's decision on a claim; or
- 180 days after the date of the SDSTA's receipt of a claim, if a decision has not been issued by that date.

E. Rules of Arbitration

Except as otherwise provided in this clause, arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated, as modified by this clause. The arbitration shall be de novo. The award rendered by the arbitrator(s) shall be final.

The following additional modifications are made to the AAA rules:

- The arbitrator(s) shall be neutral and appointed by the AAA.
- If the arbitration panel is composed of three arbitrators, one shall be an attorney. If a single arbitrator hears the claim, the single arbitrator need not be an attorney.
- A claim involving less than \$25,000 shall be heard by a single arbitrator. A claim involving \$25,000 or more shall be heard by three arbitrators.
- The parties shall have the discovery rights and follow the procedures provided in California Code Civil Procedure section 1283.05. The provisions of subparagraph (e) of section 1283.05 shall not be applicable to such discovery.
- The arbitrator(s) may employ expert technical advisor(s) for claims of extraordinary technical complexity with the consent of the parties to this Subcontract. If the arbitrator(s) utilizes an expert technical advisor, such expert technical advisor shall only communicate with the arbitrator(s) on the merits of the claim in writing, with copies served on all parties, or orally on the record in the presence of or after due notice to the parties, except as otherwise consented to in writing by all parties. All evidence, opinions or other information which an expert technical advisor testifies to or furnishes shall be subject to cross-examination and pertinent objections. Either party may object for cause to the use of a particular individual as an expert technical advisor. If such objection is not timely made, it shall be deemed waived. The parties shall share the expense for such expert technical advisor(s) on a pro rata basis.
- If more than one demand for arbitration is made by a party to this Subcontract with respect to concurrent claims referred to the SDSTA, all such concurrent claims shall be consolidated into a single arbitration hearing unless the parties to this Subcontract otherwise agree.

- The Subcontractor's performance bond surety for the project, a Subcontractor or supplier to the Subcontractor, and the Architect may be permitted to join in and be bound by the arbitration if required by the terms of their respective contracts with the Subcontractor or the SDSTA. Such joinder shall not be required if it unduly delays or complicates the expeditious resolution of the claim unless a failure to order joinder would be likely to produce inconsistent decisions from separate proceedings among the Subcontractor and SDSTA. Any such joinder will be limited to issues raised by the Subcontractor and SDSTA directly concerning the claim.
- Unless the parties otherwise agree the locale for the arbitration shall be the San Francisco Bay area.
- The arbitrator(s) shall issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of documents and other evidence in accordance with California Code of Civil Procedure section 1282.6. Witnesses shall be entitled to receive fees and mileage as provided in Code of Civil Procedure section 1283.2.
- The arbitrator(s) shall decide the claim in accordance with the applicable substantive law of California, except that clauses based upon federal regulations will be interpreted in accordance with applicable federal decisions. An award, including an award of costs and fees, is beyond the power of the arbitrator(s) if the award is based on an error of law. The award shall include a determination of all the questions submitted to the arbitrator(s) the decision of which is necessary to determine the claim, and a summary of the evidence and the reasons, factual and legal, for the decision. The award shall be in writing and signed by either the sole arbitrator or by at least a majority if there be more than one. The arbitrator(s) shall have no authority to add to, subtract from, modify, change, alter or ignore in any way the provisions of this Subcontract or expressly written modification or supplemental agreement thereto, or to extend its duration, unless all the parties hereto have expressly agreed, in writing, to give the arbitrator(s) specific authority to do so.
- Each party to the arbitration shall pay its pro rata share of the arbitrator(s), together with other expenses of the arbitration incurred or approved by the arbitrator(s), not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

F. Litigation

1. The Subcontractor may elect to litigate the SDSTA's decision on, or denial of, a claim if the amount of the claim is \$100,000 or more. Such an election shall constitute an irrevocable waiver of the right to arbitrate.
2. No demand for litigation on a dispute may be made unless the Subcontractor has submitted a claim exceeding \$100,000 to the SDSTA and until (i) the SDSTA has issued a written decision, or (ii) the one hundred eighty (180) days after the date of the SDSTA's receipt of a claim exceeding \$100,000, if a decision has not been issued by that date.
3. Timely notice of an intention to litigate a claim shall be a prerequisite to an effective election to litigate. Except as otherwise provided in this clause, the decision of the SDSTA on a claim shall be final and conclusive unless the Subcontractor delivers to the SDSTA a written notice of the intention to litigate, by certified mail, return receipt requested, or any other method that provides evidence of receipt, within:
 - 90 days from the date the Subcontractor receives the SDSTA's decision on a claim; or
 - 240 days after the date of the SDSTA's receipt of a claim exceeding \$100,000, if a decision has not been issued by that date.
4. The parties hereby elect the Superior Court of the State of California for the County in which the Subcontract was to be performed as the exclusive forum for such litigation.
5. If the SDSTA's decision involves a claim of \$100,000 or more, and a party to this Subcontract has demanded arbitration, the other party to this Subcontract shall have seven (7) days from the date of

its receipt of the notice of such filing from the AAA within which to file an answering statement of a notice of intention to litigate the decision in lieu of arbitrating it. If the other party does not deliver a written notice of intention to litigate within the seven (7) day period, by certified mail, return receipt requested, or any other method that provides evidence of receipt, that party shall be deemed to have consented to arbitration and to have irrevocably waived the right to litigate the SDSTA's decision. If no answering statement is filed within the seven (7) day period, it shall be considered as a denial of the claim.

G. Claims Excluded

The procedures and remedies provided in this clause shall not apply to:

- any claim for or dispute about penalties or forfeitures prescribed by these General Provisions or by statute or regulation which another State or Federal agency is specifically authorized to administer, settle or determine;
- any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death;
- any claim or dispute involving fraud and misrepresentation;
- any claim or dispute relating to stop payment requests or stop notices or the procedures authorized by the clause entitled "Liens And Claims For Labor And Materials;"
- any claim related to the approval, refusal to approve, or substitution of subcontractors, regardless of tier, and supplies or;
- any claim based on or involving noncompliance with or violation of any applicable health, safety or environmental regulations, statutes or provision(s).

H. Continuance of Performance

Pending any SDSTA decision on a dispute or claim, award by the arbitrator(s), or a final adjudication by the courts, the Subcontractor shall proceed diligently with the performance of this Subcontract and in accordance with the SDSTA's decision, and the SDSTA shall pay for such performance in accordance with the payment terms of this Subcontract, unless the parties to this Subcontract otherwise agree in writing.

CLAUSE 10 – NON WAIVER OF DEFAULT

Any failure by the SDSTA at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Subcontract shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way nor the right of SDSTA at any time to avail itself of any remedies as it may have for any breach of such terms or conditions.

CLAUSE 11 – ENVIRONMENT, SAFETY, AND HEALTH

The Subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the health and safety of employees and members of the public, to minimize danger from all hazards to life and property, and to prevent injury to any of its employees or other persons; and shall comply with all applicable environmental, safety, health, and fire protection regulations and requirements, including those of the SDSTA and DOE (including reporting requirements). Such precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on SDSTA or Government premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment, or facilities, whether such machinery, equipment, or facilities are the property of or are being operated by the Subcontractor, its lower-tier subcontractors, the SDSTA, or other persons. The safety of all persons employed by the Subcontractor and its subcontractors on SDSTA or Government premises, or any other person who enters thereupon for reasons relating to this Subcontract, shall be the sole responsibility of the Subcontractor.

The Subcontractor shall immediately take action to correct any noncompliance with the requirements of this clause. In the event that the Subcontractor fails to comply with said regulations or requirements of the SDSTA or the DOE, the SDSTA may, without prejudice to any other legal or contractual rights of the SDSTA, issue a stop-work

order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the SDSTA. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

CLAUSE 12 – ACCIDENT PREVENTION PROGRAM REQUIREMENTS

The Subcontractor shall submit the following to the SDSTA prior to start of any construction work, unless otherwise advised.

1. A descriptive outline of its accident prevention program. The SDSTA will provide a job hazards analysis checklist form that can serve as the descriptive outline.
2. A report of its injury, accident, fire, and property damage experience, including motor vehicle, for the previous two (2) years.
3. Detailed site-specific safety/work plans. Examples of areas to be covered are:
 - Fire protection systems.
 - Industrial Safety : Fall protection, scaffolding, trenching and/or shoring, etc.
 - Industrial Hygiene: Confined spaces; radiological and asbestos-containing materials handling; use of chemicals, oils, solvents, paints, epoxies, adhesives, binders, and gases.
 - Environmental Protection: Washdown/spilling/release of water or liquids to storm or sanitary sewer systems; abrasive blasting; generation of hazardous wastes.
4. The name and qualifications of the job site management official assigned responsibility for the Subcontractor's safety, accident prevention, and fire protection program.

The SDSTA's written authorization to proceed with construction may be withheld until the SDSTA receives an acceptable Subcontractor safety program, including required site-specific safety/work plans.

CLAUSE 13 – INJURY REPORTING

(Applicable if the Subcontract involves performance by ten or more Subcontractor employees at LBNL sites.)

(a) Subcontractor shall report all injuries to Subcontractor's employees that qualify for inclusion on Subcontractor's Cal-OSHA log to the SDSTA within 10 days of occurrence of the injury. Subcontractor shall furnish a copy of its supplemental injury report form (OSHA form 101 or equivalent) for each such case. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109. In addition, serious injuries resulting in death (including any death occurring 30 days following a work-related incident) or in-patient hospitalization and all amputations and all losses of an eye shall be reported by telephone immediately to the LBNL Health Services Receptionist, (510) 486-6266.

(b) Subcontractor shall report to the SDSTA the hours worked by Subcontractor's employees on the LBNL Site on a quarterly basis. For each quarter, the hours worked shall be reported in writing no later than the 10th day of the month following the end of the quarter. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109.

CLAUSE 14 – CHANGE ORDER ADJUSTMENTS

Price adjustments resulting from change orders issued pursuant to *CHANGES* clause not covered by unit price or alternate bids shall be determined in accordance with the following:

1. For change order work performed by the Subcontractor and/or its affiliates, the price adjustments shall be based on the agreed-upon estimate for the direct costs for labor, payroll taxes and fringe benefits, materials, supplies, sales taxes, applicable insurance, and transportation of materials, plus a fixed mark-up rate of 15% of such direct costs (for indirect costs and profit), to which shall be added any related bond costs.
2. For change order work performed by a first-tier subcontractor of the Subcontractor, the price adjustments shall be based on the estimated direct costs plus the fixed mark-up rate of 15%, as established in paragraph 1 above, to which the Subcontractor may add 5% plus any related bond costs.
3. For change order work performed by a second tier and/or lower-tier subcontractor(s), the price adjustments shall be based on the estimated

direct costs plus the fixed mark-up rate of 15%, as established in paragraph 1 above, to which the higher-tier subcontractor(s) may add a fixed mark-up rate of 5%, (for indirect costs and profit) and the Subcontractor may add a fixed mark-up rate of 5% (for indirect costs and profit) plus any related bond costs. Performance of change order work by a third or lower-tier subcontractor must be approved in advance by the SDSTA Technical Representative.

For reductions or omissions not covered by unit prices or alternate bids, the Subcontractor agrees that the SDSTA shall be credited with an agreed-upon for the estimated direct costs that would have been incurred in connection with the reduced or omitted work, plus the applicable fixed mark-up rates.

The estimated direct costs for change order work and reduced or omitted work shall consist of those for labor (including payroll taxes and fringe benefits), materials, supplies, sales taxes, applicable insurance, transportation of materials, and any related bond costs, and shall be consistent with the cost principles and procedures for construction contracts in FAR Part 31 (48 CFR Part 31), as may be supplemented by DEAR Part 931 (48 CFR Part 931), then in effect. No increases for indirect costs and profit shall be allowed above the fixed mark-up rates herein provided, regardless of the number of subcontractors involved.

Claims for change order work that involve adjustments to the schedule for performance of the work must include justification for the requested schedule adjustment. The Subcontractor shall provide a critical path or bar chart schedule and analysis demonstrating the effect of the proposed change to the schedule. Requests for adjustments to the schedule will not be considered without the appropriate justification.

The Subcontractor shall maintain separate accounts for each change or series of related changes, by job order or other suitable accounting procedure. The Subcontractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the SDSTA or the matter is conclusively resolved. The SDSTA may require change order accounting documentation whenever the estimated cost of a change or series of related changes exceeds \$25,000.

CLAUSE 15 – CHANGE ORDER CLAIM PROCEDURE

A. Instructions

The information listed below is required to be submitted by the Subcontractor with any proposal for additive or deductive changes or modifications to the Subcontract. Previously submitted information used to substantiate a prior proposal is not required to be resubmitted with the new proposal, provided the information is explicitly referenced and identified. The Subcontractor shall ensure that all lower tier subcontractors' proposals include the required submission information identified below. Proposals that do not include, as a minimum, the required information listed below, will be returned for re-submission. The Subcontractor shall be responsible for any construction delays resulting from incomplete or improper change order or claim proposals.

B. General Submittals

All proposals for additive or deductive changes or modifications to the Subcontract must include the following:

1. A summary of all costs by cost element.
2. Identification, description, and submittal of all rate agreements utilized.
3. Identification and submittal of cost or pricing data which are based on verifiable factual information.
4. Documentation and explanation of the estimating process used, including the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data.

C. Materials

Proposals involving materials must include the following:

1. An explanation of the basis for the kinds, quantities and cost of all material elements proposed.
2. A priced bill of material for the entire proposal showing part number/description, unit cost, quantity required, extended cost, basis for the proposed price (quotation, prior buy, similar item, etc.) and the rationale for the proposed price, unless an alternate method of estimating material costs has been accepted by the SDSTA.

3. A summary by class of material (subcontracts, purchase parts, raw materials, etc.) showing base material costs and any factors applied (i.e. escalation, attrition, usage variance, etc.) and the basis for the development and application of these factors.

4. Specific subcontract effort to be performed and identification of each subcontractor. For each subcontract change, provide a listing by source, item, quantity, and price, including the results of review of subcontract proposals. Where the required data or reviews have not been made available, provide the reasons for the omission.

5. Identification of any inter organizational transfers. Provide complete supporting data and basis for these transfers.

D. Direct Labor

Proposals involving direct labor must include the following:

1. Identification of labor hours by Task by labor category/skill mix.
2. Identification of rate agreement. In the absence of a labor rate agreement, provide a component breakdown of each labor rate by category. Identify any adjustment factors to these rates including the effect of union agreements, insurance adjustments, etc.

E. Other Job Site Costs

Proposals involving other job site costs must include a list all other costs by category/element (utilities, equipment rental, supervision, etc.) and provide supporting schedules and rationale for the amount proposed for each category element.

F. Markups

Proposals involving markups must reflect the allowable percentages, in accordance with the *CHANGE ORDER ADJUSTMENTS* clause.

CLAUSE 16 – LIENS AND CLAIMS FOR LABOR OR MATERIALS

The Subcontractor agrees that at any time upon request of the SDSTA it will submit a sworn statement setting forth the work performed or material furnished by the subcontractors, suppliers and material men, and the amount due to become due to each, and that before final payment called for hereunder, the Subcontractor will, if requested, submit to SDSTA a complete set of vouchers showing what payments have been made for material and labor used in connection with the work called for hereunder.

The Subcontractor shall:

1. Indemnify and save harmless the SDSTA and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor and materials furnished by the Subcontractor or its subcontractors under this Subcontract, and from all laborers', material men's and mechanics' liens upon the real property upon which the work is located or any other property of the SDSTA or the Government.
2. Promptly notify the SDSTA in writing of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, or suits, and, at the request of the SDSTA, shall do all things and execute and deliver all appropriate documents and assignments in favor of the SDSTA or the Government of all the Subcontractor's rights and claims growing out of such asserted claims, as will enable the SDSTA and the Government to protect their respective interests by litigation or otherwise.

Neither the final payment nor any part of the retained percentage shall become due until the Subcontractor, if required, delivers to the SDSTA a complete release of all liens arising out of this Subcontract, or receipts in full in lieu thereof, as the SDSTA may require, and, if required in either case, an affidavit that as far as it has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed; but the Subcontractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the SDSTA to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the SDSTA all amounts that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

Any subcontractor, material man, or workman, or anyone else having any claim against the Subcontractor for or on account of work done or

material furnished for the performance of the work provided for here under, may give written notice of said claim and the amount thereof to the SDSTA, who may, but shall not be obliged to, thereupon withhold from payments due or to become due thereafter to the Subcontractor an amount equal to such claims until such claims are adjusted and paid. The provisions of this clause shall not lessen or diminish but shall be in addition to the right or duty of the SDSTA to withhold any payments under the provisions of the laws of the State of California respecting the withholding of sums due to the Subcontractor.

CLAUSE 17 – BUY AMERICAN ACT

The FAR clause 52.225-9, *BUY AMERICAN ACT – CONSTRUCTION MATERIALS* (included by reference below) requires that only domestic construction material be used in the performance of this Subcontract. The use of any non-domestic materials under this Subcontract must be approved by the SDSTA prior to installation. Unapproved, non-domestic materials delivered to the project site shall be immediately removed from the site by the Subcontractor at the Subcontractor's expense. If non-conforming materials are installed, the Subcontractor shall remove the non-conforming material from the work and replace the material with approved domestic material, at the Subcontractor's expense. If the cost of removal is prohibitive, as determined by the SDSTA, and the non-conforming material otherwise meets the requirements of the specifications, the cost of the non-conforming material shall be deducted from the Subcontract amount.

CLAUSE 18 – FORCED, CONVICT, AND INDENTURED LABOR

- A. By signing or accepting this subcontract, the Subcontractor hereby certifies that no foreign-made equipment, materials, or supplies furnished to the SDSTA pursuant to this subcontract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.
- B. Any Subcontractor subcontracting with the SDSTA who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the SDSTA were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a subcontract pursuant to the above, may have any or all of the following sanctions imposed:

1. The subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the SDSTA.
2. The Subcontractor may be removed from consideration for SDSTA subcontracts for a period not to exceed 360 days.

CLAUSE 19 – SUPERINTENDENCE BY SUBCONTRACTOR

At all times during performance of this Subcontract and until the work is completed and accepted, the Subcontractor shall directly superintend the work or assign and have on the worksite a competent superintendent and any necessary assistants, each of whom must be satisfactory to the SDSTA. The superintendent shall not be changed except with the consent of the SDSTA, unless the superintendent proves to be unsatisfactory to the subcontractor or ceases to be in its employ. The superintendent shall have the authority to act for the Subcontractor in the Subcontractor's absence; and all notices, directions, and instructions given to the superintendent shall be as binding as if given to the Subcontractor.

The Subcontractor shall give efficient supervision of the work, using its best skill and attention. It shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the SDSTA any error, inconsistency or omission which it may discover.

CLAUSE 20 – RELEASE OF INFORMATION

The subcontractor agrees that information regarding this Subcontract, any data developed or obtained, and the name of the SDSTA, LBNL, or the Government shall not be disclosed in any publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information without prior written approval from the SDSTA Procurement Representative.

CLAUSE 21 – NOTIFICATIONS

- A. Subcontractor shall immediately notify the SDSTA Procurement Representative in writing of: (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; and (2) any claim made against the Subcontractor, the cost of which is reimbursable hereunder.
- B. Subcontractor agrees to notify the SDSTA of any government tax, fee, or charge levied or purported to be levied on or collected from the Subcontractor in connection with this Subcontract which the Subcontractor has reason to believe may be inapplicable or invalid, and which would be reimbursable or the SDSTA has claimed an exemption hereunder. Subcontractor also agrees to refrain from paying any such tax, fee, or charge, unless otherwise authorized by the SDSTA, and to take such steps as may be required by the SDSTA to cause such tax, fee, or charge to be paid under protest and, if so directed by the SDSTA, to cause to be assigned to the SDSTA or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, and to permit the SDSTA or its designee to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the Subcontractor's name.
- C. If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Subcontract, it shall immediately notify the SDSTA Procurement Representative in writing of such circumstances, and the Subcontractor shall take whatever action is reasonably necessary to resolve such circumstances within the shortest possible time.

CLAUSE 22 – LIABILITY FOR INJURIES AND DAMAGES

The Subcontractor assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any personal injury (including death), and/or damage or destruction or alleged damage to or destruction of property, sustained, or alleged to have been sustained, in connection with or arising out of the performance of the work by the Subcontractor, its agents, servants, employees, subcontractors and consultants, save and except that the Subcontractor, its agents, servants, employees, subcontractors and consultants shall not be liable for the sole negligence of the SDSTA.

The Subcontractor shall indemnify and hold harmless the SDSTA and the Government, their officers, agents, servants, and employees from any and all liability for such losses, expenses, damages, demands, and claims, and shall defend any suit or action brought against any or all of them based on any alleged personal injury or property damage, and shall pay any damages, costs and expenses, including attorney's fees, in connection with or resulting from such suit or action.

CLAUSE 23 – LAWS AND REGULATIONS

All delivered items and all services performed under this Subcontract shall be in compliance with all applicable federal, state, and local laws, ordinances, statutes, codes, rules, and regulations (including DOE regulations), including but not limited to those relating to wages, hours, employment, discrimination, immigration, and safety (including OSHA.) The Subcontractor shall also comply with the Contractor Requirements Document (CRD) of any DOE Directive referenced within the Subcontract or these General Provisions.

Except as otherwise directed, the subcontractor shall procure all necessary permits or licenses required for the performance of work under this subcontract.

CLAUSE 24 – ACCEPTANCE OF SUBCONTRACT

The Subcontractor's written acceptance of this Subcontract or the performance of any portion of this Subcontract shall constitute the Subcontractor's unqualified acceptance of this Subcontract and all of the Subcontract's terms and conditions. Any alterations made to the documents comprising this Subcontract or any conditions imposed by the Subcontractor upon its written acceptance of this Subcontract are not accepted, shall constitute a proposal for modification of the Subcontract only, and shall have no effect on the validity or the Subcontractor's acceptance of this Subcontract and its terms and conditions, anything to the contrary notwithstanding.

In the event the Subcontractor's business status indicated in the Subcontract or the Subcontractor's proposal is not accurate and current, in accordance with applicable Federal laws, executive orders, and regulations, the SDSTA may cancel this Subcontract, without further obligation.

CLAUSE 25 – ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract document (including any signature page and schedule of articles), these General Provisions, and any other referenced or incorporated clauses, provisions, and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) these General Provisions, including the FAR and DEAR clauses listed in the clause entitled *Clauses Incorporated by Reference*; (c) any specifications (including drawings); (d) other documents listed in the Subcontract Article entitled *Incorporated Documents*, if any, in the order in which they are listed; and (e) any other referenced or incorporated clauses, provisions, and documents.

CLAUSE 26 – CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9 of CFR Title 48 and available at <http://www.gpo.gov/fdsys/>, are hereby incorporated by reference as a part of these General Provisions, as prescribed below. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

As used in the clauses, the term "contract" shall mean this Subcontract; the term "Contractor" shall mean the Subcontractor; the lower case term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the SDSTA, except in FAR 52.227-1, 52.227-2, 52.227-4, 52.227-14, and 52.227-19, and DEAR 970.5232-3, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the SDSTA. As used in FAR 52.245-1, the terms "Government" and "Contracting Officer" shall mean the SDSTA, except with respect to title. As used in DEAR 952.227-9 and 970.5232-3, the term "DOE" shall mean DOE and the SDSTA.

THE FOLLOWING CLAUSES APPLY TO ALL SUBCONTRACTS:

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| DEAR 952.203-70 | WHISTLEBLOWER PROTECTION OF SUBCONTRACTOR EMPLOYEES (DEC 2000). Applies if the Subcontract involves any work at a DOE-owned or leased facility. |
| DEAR 952.204-71 | SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011). Applies if any nuclear technology information will be made available to foreign nationals of sensitive foreign nations. |
| DEAR 952.204-77 | COMPUTER SECURITY (AUG 2006). Applies if the Subcontractor has access to any computers owned, leased or operated by or on behalf of LBNL or DOE. |
| DEAR 970.5208-1 | PRINTING (DEC 2000). Applies if printing is specified under the Subcontract. |
| FAR 52.215-19 | NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997) |
| FAR 52.219-8 | UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014). Applies if the Subcontract involves any further subcontracting opportunities. |
| FAR 52.222-1 | NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) |
| FAR 52.222-4 | CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (MAY 2014). Applies if the Subcontract involves mechanics or laborers and is for other than "commercial items." |

FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (APR 2015)		repair or overhaul work.
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2015) Note: Download the required EEO Poster at: http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm	FAR 52.227-19	If delivery of Restricted Computer Software is required, then ALTERNATE III shall apply. COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007). Applies if the Subcontract involves the acquisition of commercial computer software.
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (MAR 2015)	DEAR 952.227-82	RIGHTS TO PROPOSAL (APR 1994), if the Subcontract is based on a technical proposal.
FAR 52.222-55	MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (DEC 2015)	DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010), Paragraphs (a) through (h), excluding Paragraph (d). Applies if costs incurred are a factor in determining any payable amount. The records shall be retained for 3 years after final payment.
DEAR 970.5223-1	INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)		
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997), with ALTERNATE I (JUL 1995). Applies if the Subcontract involves the delivery or on-site use of any hazardous materials.	FAR 52.232-5	PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 2014)
FAR 52.223-11	OZONE-DEPLETING SUBSTANCES (MAY 2001). Applies if the Subcontract involves the delivery or use of ozone-depleting substances or supplies that may contain or be manufactured with ozone depleting substances	FAR 52.232-39	UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS (JUN 2013)
FAR 52.223-12	REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995). Applies if the Subcontract is for services involving the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances, as a refrigerant, such as air conditioners (including motor vehicles), refrigerators, chillers, or freezers.	FAR 52.232-40	PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) Applies to small business concerns
DEAR 970.5225-1	COMPLIANCE WITH EXPORT CONTROL LAWS AND REGULATIONS (NOV 2015)	FAR 52.236-2	DIFFERING SITE CONDITIONS (APR 1984)
FAR 52.225-9	BUY AMERICAN ACT – CONSTRUCTION MATERIALS (MAY 2014)	FAR 52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)	FAR 52.236-5	MATERIAL AND WORKMANSHIP (APR 1984)
FAR 52.227-4	PATENT INDEMNITY – CONSTRUCTION CONTRACTS (DEC 2007)	FAR 52.236-7	PERMITS AND RESPONSIBILITIES (NOV 1991)
FAR 52.225-21	REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS-BUY AMERICAN ACT- CONSTRUCTION MATERIALS (MAY 2014)	FAR 52.236-8	OTHER CONTRACTS (APR 1984)
DEAR 952.227-9	REFUND OF ROYALTIES (MAR 1995). Applies if “royalties” are paid under the Subcontract by the Subcontractor, or a subcontractor at any tier.	FAR 52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)
FAR 52.227-14	RIGHTS IN DATA-GENERAL (MAY 2014), with ALTERNATE V and DEAR 927.409(d)(3), and substituting paragraph (a) with DEAR 927.409(a). Applies if any “data” will be produced, furnished, or acquired under the Subcontract. If delivery of Limited Rights Data is required, then ALTERNATE II shall apply, with the following disclosure purposes added to the end of paragraph (a) of the Limited Rights Notice: 1. Use (except for manufacture) by support services contractors or subcontractors; 2. Evaluation by non-government evaluators; 3. Use (except for manufacture) by other contractors or subcontractors participating in the Government’s program of which the specific subcontract is a part; 4. Emergency repair or overhaul work; and 5. Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation or for emergency	FAR 52.236-10	OPERATIONS AND STORAGE AREAS (APR 1984)
		FAR 52.236-11	USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)
		FAR 52.236-12	CLEANING UP (APR 1984)
		FAR 52.236-13	ACCIDENT PREVENTION (NOV 1991)
		FAR 52.236-14	AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)
		FAR 52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)
		FAR 52.236-17	LAYOUT OF WORK (APR 1984)
		FAR 52.236-21	SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)
		FAR 52.242-14	SUSPENSION OF WORK (APR 1984)
		FAR 52.244-2	SUBCONTRACTS (OCT 2010), with ALTERNATE I (JUN 2007). Applies if meets the criteria of FAR 44.204(a)(1). Paragraph (d) insert regarding consent is: “Any subcontract or purchase order that: (1) is for work at an LBNL site; (2) exceeds \$150,000 and is for other than a “commercial item” as defined in FAR 2.101; or (3) provides for the reimbursement of costs.”
		FAR 52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010).
		FAR 52.245-1	GOVERNMENT PROPERTY (APR 2012), with ALTERNATE I
		FAR 52.246-21	WARRANTY OF CONSTRUCTION (MAR 1994), with ALTERNATE I (APR 1984).
		FAR 52.247-63	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003). Applies if the Subcontract involves international air transportation.
		FAR 52.247-64	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006). Applies if the Subcontract involves ocean

transportation of supplies other than "commercial items", except as described in paragraph (e)(4) of the clause.

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DEAR 952.247-70 FOREIGN TRAVEL (JUNE 2010)
FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (APR 2012), with ALTERNATE I (SEP 1996).
FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$2,000 OR MORE:

FAR 52.222-6 CONSTRUCTION WAGE RATE REQUIREMENTS (MAY 2014).
Note: See the applicable Wage Determination which is included in the Subcontract. Download the required Poster at:
<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>
FAR 52.222-7 WITHHOLDING OF FUNDS (MAY 2014)
FAR 52.222-8 PAYROLLS AND BASIC RECORDS (MAY 2014)
FAR 52.222-9 APPRENTICES AND TRAINEES (JUL 2005)
FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)
FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)
FAR 52.222-12 CONTRACT TERMINATION – DEBARMENT (MAY 2014)
FAR 52.222-13 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)
FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)
FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (MAY 2014)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$3,500:

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (OCT 2015)
FAR 52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$10,000:

FAR 52.222-27 AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 2015)
FAR 52.222-40 NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (Dec 2010)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$15,000:

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUL 2014)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR \$25,000 OR MORE:

DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010).
Applies if the Subcontract involves any of the hazardous activities stipulated in 10 CFR 707.2

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR \$35,000 OR MORE:

FAR 52.209-6 PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (OCT

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$100,000 OR MORE:

FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)
DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$150,000:

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)
FAR 52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014), excluding paragraph (c)(1)
FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)
FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)
FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)
DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009), with ALTERNATE I. Applies if the Subcontract involves advisory and assistance services, as defined in FAR 2.101. The period of ineligibility shall be five years.
FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (OCT 2015)
FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (FEB 2016)
FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)
FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)
FAR 52.243-4 CHANGES (JUN 2007)
FAR 52.246-2 INSPECTION OF SUPPLIES -- FIXED-PRICE (AUG 1996)
FAR 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$500,000:

FAR 52.204-14 SERVICE CONTRACT REPORTING REQUIREMENTS (JAN 2014)
DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$750,000:

FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011). Applies if certified cost or pricing data is required.
FAR 52.215-11 PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA – MODIFICATIONS (AUG 2011). Applies if certified cost or pricing data is required.
FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 2010). Applies if certified cost or pricing data is required.
FAR 52.215-13 SUBCONTRACTOR CERTIFIED COST OR PRICING DATA – MODIFICATIONS (OCT 2010). Applies if certified cost or pricing data is required.

THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$1,500,000:

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2015). Applies unless the Subcontractor is a small business or there are no subcontracting possibilities.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$5,500,000:

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (OCT 2015). Applies if the Subcontract has a performance period of more than 120 days. All disclosures of violation of the False Claims Act or of Federal criminal law shall be directed to the DOE Inspector General, with a copy to the LBNL DOE Contracting Officer.

FAR 52.203-14 DISPLAY OF HOTLINE POSTER(S) (DEC 2007) Download the required poster at:
<http://energy.gov/ig/downloads/office-inspector-general-hotline-poster>

THE FOLLOWING DOE ORDERS (CONTRACTOR REQUIREMENTS DOCUMENTS ONLY) APPLY TO ALL SUBCONTRACTS:

DOE O 221.1A REPORTING FRAUD, WASTE AND ABUSE TO THE OFFICE OF INSPECTOR GENERAL (4/19/08)

DOE O 221.2A COOPERATION WITH THE OFFICE OF INSPECTOR GENERAL (2/25/08)

DOE O 414.1D QUALITY ASSURANCE (5/8/13)

DOE O 442.2 DIFFERING PROFESSIONAL OPINIONS FOR TECHNICAL ISSUES INVOLVING ENVIRONMENT, SAFETY, AND HEALTH TECHNICAL CONCERNS (7/29/11)

END OF GENERAL PROVISIONS

EXHIBIT F
Wage Determination



Department of Energy

Oak Ridge Office
P.O. Box 2001
Oak Ridge, Tennessee 37831

April 24, 2017

Mr. Gregory Florey
Subcontract Manager
Lawrence Berkeley National Laboratory
One Cyclotron Road
Berkeley, California 94720

Dear Mr. Florey:

DAVIS-BACON WAGE DETERMINATION REQUEST NO. 2017-063

Please find enclosed the Wage Determination for the following specified services:

1. Request received: Monday, April 24, 2017
2. Project Scope Description: Infrastructure construction build out in the Davis Lab at the Sanford Underground Research Facility at the former Homestake Mine, located in Lead, South Dakota.
3. Location of performance: Lead, South Dakota (Lawrence County)
4. Applicable minimum wage determination (s): Wage Determination No. SD170022 (Mod. 3) dated April 21, 2017, is applicable to this proposed contract.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa B. Carter".

Lisa B. Carter, Supervisor
Contractor Industrial Relations

Enclosure

General Decision Number: SD170022 04/21/2017 SD22

Superseded General Decision Number: SD20160022

State: South Dakota

Construction Type: Building

County: Lawrence County in South Dakota.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/06/2017
1	01/27/2017
2	02/10/2017
3	04/21/2017

ASBE0057-001 07/01/2014

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe & Mechanical System Insulation)....	\$ 30.04	14.50

BRSD0004-003 05/01/2016

	Rates	Fringes
BRICKLAYER.....	\$ 29.08	5.74

ELEV0033-004 01/01/2017

	Rates	Fringes
ELEVATOR MECHANIC.....	\$ 42.13	31.585

FOOTNOTES: 8 Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day; the Day after Thanksgiving & Christmas Day.

ENGI0049-009 03/01/2014

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
(1) Tower Crane.....	\$ 23.47	6.02
(3) Hydro Crane; Crane (All Other Types).....	\$ 22.88	6.02

Long Boom Pay: 151' to 200' - \$0.50 per hour additional; 201' and over - \$0.60 per hour. Measurement shall be from butt pins of the boom to the top of the sheave or jib sheave.
Tower Crane Premium: From the top of the tower crane foundation to the top of the tower crane apex. In the case of luffing cranes, to the top of Gantry, plus boom length per classification:

- 250' to 299' - \$1.00
- 300' to 349 - \$1.50
- 350' to 399' - \$2.00
- 400' to 449' - \$2.50
- 450' and over - \$3.00

IRON0021-018 05/01/2016

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 22.21	15.13

PLAS0538-001 10/01/2016

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 26.00	12.59

PLUM0300-014 05/01/2016

	Rates	Fringes
PLUMBER.....	\$ 27.26	12.90

* SFSD0669-003 04/01/2017

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 31.01	16.74

SHEE0010-021 06/01/2014

	Rates	Fringes
SHEET METAL WORKER (HVAC Duct Installation Only).....	\$ 22.61	11.32

SUSD2012-013 08/21/2014

	Rates	Fringes
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ACOUSTICAL CEILING MECHANIC.....	\$ 16.68	0.00
CARPENTER, Excludes Acoustical Ceiling Installation.....	\$ 18.63	2.01
ELECTRICIAN (Low Voltage Wiring Only).....	\$ 18.50	4.92
ELECTRICIAN, Excludes Low Voltage Wiring.....	\$ 24.27	8.06
LABORER: Common or General.....	\$ 12.47	0.00
LABORER: Mason Tender - Brick...	\$ 14.19	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 19.34	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 16.14	0.00
PAINTER (Brush, Roller, and Spray).....	\$ 19.22	0.00
ROOFER.....	\$ 14.52	2.09

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor

200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

EXHIBIT G

**Attached for reference only
(to be signed in the presence of SDSTA personnel
at the time of entering the underground property)**

ACKNOWLEDGEMENT OF RISK and RELEASE, AGREEMENT NOT TO SUE AND WAIVER

In consideration for being permitted to enter upon the property of the South Dakota Science and Technology Authority (referred to in this document as the “Authority”) located in and near Lead, South Dakota, including both the surface property and the underground workings and facilities owned by the Authority (referred to in this document as the “Authority’s Surface Property” or the “Authority’s Underground Property” and collectively, the “Authority’s Property”), which permission was granted at my request, I do hereby freely and knowingly state, declare, and agree as follows:

(Initial)_____1. I have independently investigated the risks to my health, life, and safety and the risks of damage to my property resulting from my entry, presence, and activities upon and in the Authority’s Property, including both the surface property and the underground property. Based upon that investigation, I have developed an informed understanding of the risks to me and my property resulting from my entry, presence, and activities upon either or both of the Authority’s Surface Property and the Authority’s Underground Property.

(Initial)_____2. Without limiting the generality of paragraph 1 above, I am aware that the Authority’s Surface Property is a former commercial mine which includes and contains heavy machinery, high-voltage electrical connections and conduits, open catwalks and other elevated walkways, apparent and hidden hazards of tripping or falling, industrial and mining chemicals and other agents, naturally-occurring minerals, naturally-occurring land and environmental conditions that are potentially hazardous, fully or partially reclaimed mine facilities (including, but not limited to, open pits, underground mine workings, process plants and waste rock areas), possible air-borne contaminants, high-pressure lines and vessels, falling or low-hanging items that present a risk of head injury and numerous other serious apparent, and unapparent risks to my health, life and safety and risks of damage to my property.

(Initial)_____3. Without limiting the generality of paragraph number 1 above, I am further aware that in addition to the risks associated with the Authority’s Surface Property described in paragraph 2 above, the Authority’s Underground Property is also a former commercial mine and it also includes and contains heavy machinery, high-voltage electrical connections, and conduits, open catwalks and other elevated walkways, underground mine workings, apparent and hidden hazards of tripping or falling, industrial and mining chemicals and agents, naturally-occurring minerals, naturally-occurring geologic and environmental conditions that are potentially hazardous, possible air-borne contaminants, high-pressure lines and vessels and falling or low-hanging rock or other items that present a risk of head injury. I am further aware that going underground involves a substantial risk of underground fires, underground floods, roof falls and collapse, failure of lifts, hoists and ventilation equipment, suffocation, being trapped, being crushed to death and numerous other serious apparent and unapparent risks to my health, life and safety, and risks of damage to my property.

(Initial)_____4. I acknowledge I have the time, knowledge, and experience to make an intelligent choice concerning whether to assume the risks associated with my entry, and activities upon or in the Authority’s Surface Property, the Authority’s Underground Property, or both.

(Initial)_____5. I do hereby voluntarily, freely, and unconditionally assume any and all risk of damage to my health, personal injury, death, and damage to my property in any way associated with my entry, presence, or activities upon, in, or around Authority’s Surface Property and the Authority’s Underground Property.

(Initial)_____6. I acknowledge that I have been given a safety briefing or safety training, and I agree to abide by guidelines explained during that briefing or training.

(Initial)_____7. In the interest of safety and security, I agree that any person or property may be subject to inspection by Authority personnel at any time I am on Authority property.

(Initial)_____8. I acknowledge that my failure to comply with any applicable law, regulation, rule, or policy (including the guidelines explained during my safety briefing or safety training) is grounds for the Authority to immediately revoke my permission to enter Authority’s Property, to order me to immediately leave the Authority’s

Property, and to deny me future access to the Authority's Property. I agree to immediately comply with all directions given by the Authority to me pursuant to this paragraph.

(Initial) _____ 9. I have been provided and have read and signed (or will sign), a document entitled "RELEASE, AGREEMENT NOT TO SUE AND WAIVER."

In consideration for being permitted to enter upon the property of the South Dakota Science and Technology Authority (referred to in this documents as the "Authority") located in and near Lead, South Dakota, including both the surface property and the underground workings and facilities owned by the Authority (referred to in this document as the "Authority's Surface Property" or the "Authority's Underground Property" and collectively, the "Authority's Property"), which permission was granted at my request, I do hereby freely and knowingly state, declare and agree as follows:

(Initial) _____ 1. I have today been provided and have read and signed a form entitled "ACKNOWLEDGEMENT OF RISK," which describes in general terms the numerous apparent and unapparent risks of serious personal injury, death, or damage to my property, which exists on and in both the Authority's Surface Property, and the Authority's Underground Property.

(Initial) _____ 2. Being fully aware of the risks as described in the accompanying "ACKNOWLEDGEMENT OF RISK," I do hereby voluntarily, freely, and unconditionally release and agree not to sue the following persons and entities for any damage to my health, personnel injury, death and/or damage to my property in way associated with my entry, presence or activities upon, in, or around the Authority's Surface Property and/or the Authority's Underground Property, and I further hereby waive any such claims I may have against the following persons and entities. This release, agreement not to sue and waiver is given in favor of the following persons and entities:

(Initial) _____ (a). The State of South Dakota and its elected representatives and officers, unelected officers, employees, agents consultants and representatives; and

(Initial) _____ (b). The South Dakota Science and Technology Authority and its officers, directors, employees, agents, consultants and representatives, and any visitor, contractor, consultant, or any other person (natural or otherwise) that the South Dakota Science and Technology Authority directs to, invites or permits upon, or authorizes to use the Authority's Property and its or their agents, representatives, consultants, lessees, licensees, and invitees; and

(Initial) _____ (c). Barrick Gold Corporation; any person, partnership, joint venture, corporation, or any other form of enterprise which directly or indirectly controls, is controlled by or is under common control with Barrick Gold Corporation; any officer, director, employee, agent or consultant of Barrick Gold Corporation; and any visitor, contractor, consultant, or any other person (natural or otherwise) that Barrick Gold Corporation directs to, invites, or permits upon or authorizes to use the Authority's Property and its or their agents, representatives, consultants, lessees, licensees, and invitees; and

(Initial) _____ (d). Homestake Mining Company of California, any person, partnership, joint venture, corporation, or any other form of enterprise which directly or indirectly controls, is controlled by, or is under common control with Homestake Mining Company of California; any officer, director, employee, agent, or consultant of Homestake Mining Company of California; and any visitor, contractor, consultant, or any other person (natural or otherwise) that Homestake Mining Company of California directs to, invites, or permits upon, or authorizes to use the Authority's Property and its or their agents, representatives, consultants, lessees, licensees, and invitees; and

(Initial) _____ (e). Mr. T. Denny Sanford or any other person or entity providing funding or other support for the construction, operation, and maintenance of the Authority, the Authority's Property, and/or the Sanford Underground Science and Engineering Laboratory.

(Initial) _____ 3. I understand that this document does not act to release, discharge, or waive any rights I may have to compensation or the payment of medical expenses under applicable workers compensation law.

(Initial) _____ 4. The release, agreement not to sue and waiver contained in this documents includes any and all claims I or my heirs, representatives, successors, or assigns (including, but not limited to, my family) may have as a result of any damage to my health, injury to me, my death, or damage to my property, including incidental and consequential damages and loss of income, support, and companionship.

(Initial) _____ 5. I agree that if a court or other tribunal with jurisdiction rules that some portion of this document is for any reason unenforceable, the remaining portions of this document shall remain valid and enforceable.

(Initial) _____ 6. The release and waiver contained in this document and my agreement not to sue the parties named above is and will be binding on me and my heirs, representative, successors, and assigns (including, but not limited to, my spouse and other family).

I HAVE READ THIS RELEASE, AGREEMENT NOT TO SUE AND WAIVER, CONSISTING OF THREE PAGES AND SIX NUMBERED PARAGRAPHS. I FULLY UNDERSTAND ITS TERMS, UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE SIGNED IT FREELY AND VOLUNTARILY WITHOUT ANY INDUCEMENT, ASSURANCE, OR GUARANTEE BEING MADE TO ME. I INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY, AGREEMENT NOT TO SUE AND WAIVER OF LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

DATED this _____ day of _____, 20_____.

[PRINT NAME]

I HAVE READ THIS RELEASE, AGREEMENT NOT TO SUE AND WAIVER

THUMB
PRINT
HERE

[SIGNATURE]

I am requesting permission to enter the Authority's Property as an officer, agent, employee, consultant, scientific investigator, student, visitor, and I am otherwise affiliated with

_____.

FOR OFFICE USE ONLY:

Witnessed by: _____
[Print Name]

Logged by: _____

Witnessed by: _____
[Signature]

Date Logged: _____

I HAVE READ THIS ACKNOWLEDGEMENT OF RISK, CONSISTING OF THREE PAGES AND NINE NUMBERED PARAGRAPHS. I FULLY UNDERSTAND ITS TERMS AND THE RISKS DESCRIBED IN IT. I HAVE SIGNED IT FREELY AND VOLUNTARILY WITHOUT INDUCEMENT, ASSURANCE, OR GUARANTEE BEING MADE TO ME.

DATED this _____ day of _____, 20_____.

[PRINT NAME]

I HAVE READ THIS ACKNOWLEDGEMENT

THUMB
PRINT
HERE

[SIGNATURE]

I am requesting permission to enter the Authority's Property as an officer, agent, employee, consultant, scientific investigator, student, visitor, and I am otherwise affiliated with

_____.

FOR OFFICE USE ONLY:

Witnessed by: _____
[Print Name]

Logged by: _____

Witnessed by: _____
[Signature]

Date Logged: _____

EXHIBIT H

(to be signed with the Contract Documents)

RELEASE, AGREEMENT NOT TO SUE, AND WAIVER

THIS RELEASE, AGREEMENT NOT TO SUE and WAIVER is made and entered into this XX day of Month, 20XX, by COMPANY (“Contractor”) in favor of the Homestake Indemnified Parties (as defined below).

RECITALS

1. Contractor has entered into an Agreement with the South Dakota Science and Technology Authority (the “Authority”) of even date herewith, (the “Agreement”) for certain work to be performed by the Contractor in the Underground Property (as defined below).
2. Pursuant to the terms of Section 6.10(b) of the Property Donation Agreement, as amended, the Agreement requires the Contractor to execute this Release, Agreement Not To Sue and Waiver. Contractor acknowledges that it has been provided an opportunity to review the terms of Section 6.10(b) of the Property Donation Agreement (as amended).
3. The Contractor acknowledges that the award of the Agreement to it by the Authority and the payment by the Authority of the sums to be paid to the Contractor pursuant to the Agreement constitute good and valuable consideration for the Contractor’s execution of this Release, Agreement Not to Sue and Waiver.
4. The Contractor is an experienced underground mining Contractor or has made itself familiar with the risks associated with working underground, and thus has knowledge of the risk of injury, death or damage to property (including, but not limited to, the risk of injury, death or damage to third persons) resulting from working or being present in the Underground Property. Without limiting the generality of the foregoing, the Contractor has read the *Acknowledgment of Risk* and the *Release, Agreement Not to Sue and Waiver*, and acknowledges knowledge of the risks described therein.
5. The Contractor has thoroughly and fully familiarized itself with the nature, general layout and operational history of the Mine (as defined below), and is thus familiar with the risk of injury, death or damage to property (including, but not limited to, the risk of injury, death or damage to third persons) presented by a mine of the size and nature, and with the extensive and lengthy operational history, of the Mine.

AGREEMENT

Based upon the foregoing Recitals, and for good and valuable consideration (including, but not limited to, the award of the Agreement), the receipt and sufficiency of which are hereby conclusively and irrevocably acknowledged by Contractor, Contractor agrees as follows:

A. Definitions.

1. “Homestake Indemnified Parties” means Barrick Gold Corporation; Homestake Mining Company of California; any person, partnership, joint venture, corporation or other form of enterprise which directly or indirectly controls, is controlled by or is under common control with Barrick Gold Corporation and/or Homestake Mining Company of California; any person visiting the surface or underground property at the request or with the authorization of any of the foregoing; and any contractor, subcontractor, director, officer, employee, agent, consultant or subconsultant or any other person or entity that Barrick Gold Corporation, Homestake Mining Company of California or any of their representatives invites on, allows or authorizes to use the surface property or the underground property and each of their agents, representatives, consultants, lessees, licensees and invitees.
2. “Homestake Indemnified Party” means one of the Homestake Indemnified Parties.

3. "Mine" means the former Homestake Gold Mine in and near Lead, Lawrence County, South Dakota.

4. "Property Donation Agreement" or "PDA" means the Property Donation Agreement Between and Among Homestake Mining Company of California, the State of South Dakota and the South Dakota Science and Technology Authority, dated as of April 14, 2006, as amended effective September 17, 2009.

5. "Underground Property" means any property at the Mine owned by the Authority which is beneath the surface.

B. Release

1. Contractor hereby voluntarily, freely, irrevocably and unconditionally **releases, and agrees not to sue** the Homestake Indemnified Parties, or any of them, for any damage to health, personal injury, death and/or damage to property of the Contractor or any of its officers, directors, employees, agents, representatives, consultants, licensees and invitees in any way associated with Contractor's entry, presence or activities upon, in or around any surface property owned by the Authority and/or the Underground Property, and Contractor hereby **waives** any such claims.

2. This release, agreement not to sue and waiver includes any and all claims Contractor, its officers, directors, employees, agents and consultants, or any of its or their heirs, representatives, successors or assigns may have as a result of any damage to health, personal injury or death and/or damage to property, including incidental and consequential damages and loss of income, support and companionship.

3. This release, agreement not to sue and waiver is intended to be construed as broadly as possible so as to give the Homestake Indemnified Parties the maximum protection allowed by applicable law and as required by Section 6.10(b) of the PDA.

4. This Release, Agreement Not to Sue and Waiver shall not be amended or modified except in writing, signed by the Contractor and an authorized representative of the Homestake Indemnified Parties.

5. This Release, Agreement Not to Sue and Wavier shall be binding upon the Contractor and inure to the benefit of the Homestake Indemnified Parties and their respective successors and permitted assigns, provided that Contractor shall not assign this Agreement or any rights herein without the prior written consent of the Homestake Indemnified Parties. Any purported assignment in the absence of such written consent shall be void.

6. The invalidity or unenforceability of any provision of this Release, Agreement Not to Sue and Waiver shall not affect the validity or enforceability of any other provision hereof, each of which shall remain in full force and effect.

7. The failure of Contractor or any of the Homestake Indemnified Parties to insist, in any one or more instances, upon the strict performance of any of the terms, conditions or covenants hereof shall not be construed as a waiver or relinquishment for the future of such term, condition or covenant. No waiver, change, modification or discharge by the Contractor or any of the Homestake Indemnified Parties of any provision hereof shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Contractor and an authorized representative of the Homestake Indemnified Parties.

8. All notices, consents, requests and approvals, any notice of change in address for the purpose of this paragraph, and other communications provided for or required herein, shall be given (a) by personal delivery; (b) by electronic communication, with a confirmation sent by registered or certified mail, return receipt requested; (c) by registered or certified mail, return receipt requested; or (d) by reputable express courier. All notices, consents, requests and approvals, any notice of change in address for the purpose of this Section, and other communications provided for or required herein, shall be effective and shall be deemed delivered on the date of delivery if delivered during normal business hours, and, if not delivered during normal business hours, on the next business day following delivery:

(a) If to the Contractor:

Name, Title
Company
Address
City, State ZIPCODE

(b) If to Homestake:
Homestake Mining Co.
ATTN: Closure Manager
11457 Bobtail Gulch St.
Central City, SD 57754

A true and correct copy of any notice, consent, request and approval, and of any notice of change in address for the purpose of this paragraph shall also be provided to the Authority at the following addresses:

South Dakota Science and Technology Authority
630 East Summit
Lead, South Dakota 57754-1700
Attention: Michael Headley, Executive Director

with a copy to:

Timothy M. Engel
May, Adam, Gerdes & Thompson LLP
503 South Pierre Street
P.O. Box 160
Pierre, South Dakota 57501

9. This Release, Agreement Not to Sue and Waiver shall be governed by and construed according to the internal laws of the State of South Dakota, without regard to conflicts of law principles. Any action, suit or proceeding arising out of or related to this Agreement shall be brought in the state courts of the State of South Dakota.

10. Time is of the essence in the performance of the covenants, terms and conditions of this Release, Agreement Not to Sue and Waiver.

11. All Exhibits referred to herein are hereby incorporated herein by reference.

12. All of the terms and provisions of this Release, Agreement Not to Sue and Waiver shall survive termination or completion of the terms of the Agreement.

IN WITNESS WHEREOF, the Contractor has caused this Agreement to be executed on the day and year first above written.

COMPANY

By _____
Name, Title

ATTEST:

By _____
Its _____