

SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY
UNDERGROUND SERVICE CONTRACT
by and between

Company
Street or PO Address
City, State Zip Code

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

Referred to as “Contractor”

Referred to as “SDSTA”

PROJECT: HVAC MECHANICAL SERVICES
Contract #2017-29

THIS CONTRACT, made effective the XXth day of Month, 201X, is made for the described services with the Contractor for the consideration stated herein:

I. THE SCOPE OF WORK OF THE CONTRACTOR

- A. The Contractor shall provide and furnish all of the supervision, plant, labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to perform and complete in a workmanlike manner and ready for operation all the Work required **type in brief description of work to be performed under the contract**, more fully described in the attached Scope of Work, as per request from the SDSTA in strict compliance with the Contractor's Proposal and any other Contract Documents herein mentioned which are a part of this Contract. Each request and the Contractor's Proposal in response thereto shall be referred to hereinafter as the “Work.” **Contractor Representative (email)** shall be the Contractor's designated representative in all matters pertaining to this Contract.
- B. **CONTRACT DOCUMENTS:** The following documents and any other documents incorporated in them by reference constitute the Contract Documents:
1. This Contract, including:
 - Insurance Requirements attached as Exhibit A.
 - Environment Health and Safety Requirements attached as Exhibit B.
 - Scope of Work attached as Exhibit C.
 - Contractor's Proposal attached as Exhibit D.
 - Compliance with Federal Acts attached as Exhibit E.
 - Wage Determination attached as Exhibit F.
 - Acknowledgement of Risk and Release, Agreement not to Sue, and Waiver attached as Exhibit G.
 - Release, Agreement not to Sue, and Waiver in favor of the Homestake Indemnified Parties, attached as Exhibit H.
 2. Addenda issued prior to execution of this Agreement.

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

- C. **TIME FOR COMPLETION:** The work under this Contract shall be commenced within ten (10) consecutive calendar days after date of issuance of notice to proceed by the SDSTA and shall be completed as described in the SDSTA's written request, excluding punch list items. As to each Contractor proposal, this completion date shall be referred to herein as the “Contract Time.”
- D. This Contract shall terminate as of **Date**, unless otherwise terminated according to the early termination provisions of this Contract.

II. SDSTA REPRESENTATIVE

The SDSTA shall from time-to-time designate in writing an SDSTA Representative. The SDSTA Representative shall be responsible for providing SDSTA-supplied information and approvals in a timely manner to permit Contractor to fulfill its obligations pursuant to this Agreement. The SDSTA Representative shall also provide Contractor with prompt notice if it observes any failure on the part of the Contractor to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the work provided for in this Agreement. Unless changed in writing by the SDSTA, the SDSTA Representative is **Name (Email)**.

III. THE RESPONSIBILITIES OF THE SDSTA

- A. For the performance of the work specified in the Contract Documents, SDSTA will pay Contractor and Contractor will accept as full compensation a sum not to exceed the amount of Contractor's proposal amount for each request for work. Nothing in this Agreement shall require the SDSTA to accept any proposal made by Contractor. In no event may the total amount paid to Contractor during the term of this Contract exceed **WRITTEN AMOUNT DOLLARS (\$XX,XXX.XX)**.
- B. Unit Prices, if any, are as follows: *Unit prices are set forth in Exhibit D.*

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

IV. CHANGE ORDERS

- A. A Change Order is a written order to the Contractor signed by the SDSTA, 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 Contractor's agreement therewith, including the adjustment in the Contract Sum or the Contract Time.
- B. The SDSTA, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.
- C. The cost or credit to the SDSTA resulting from a change in the Work shall be determined in one or more of the following ways:
 - 1. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation and acceptance to the SDSTA Representative for such purposes. Such lump sum proposals shall be supported by a completely detailed analysis of the proposed change subdivided into the Work of the Contractor and/or the Work of each subcontractor(s) involved in the proposed change, as applicable.
 - 2. By unit prices stated in this Contract or subsequently agreed upon.
- D. If none of the methods set forth in this Article IV, paragraphs C1 and C2 is agreed upon, the Contractor, provided Contractor receives a written order signed by the SDSTA, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the SDSTA 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 Contractor's fee. In such case, Contractor shall keep and present, in such form as the SDSTA may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order.

V. DIFFERING SITE CONDITIONS

- A. Contractor shall promptly, and before the conditions are disturbed, give written notice to the SDSTA and Project Engineer 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 inherent in work of the character provided for in this Contract.
- B. The SDSTA 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 changed conditions, the Contract Sum shall be adjusted as provided in Article III, provided that the Work has been ordered in writing by the SDSTA.

VI. DELAYS AND EXTENSIONS OF TIME

- A. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the SDSTA, or by any separate contractor employed by the SDSTA, or by changes ordered in the Work, or by labor disputes not caused by the labor practices of the Contractor, or by fire, unusual delay in transportation, severe and unusual weather conditions not reasonably anticipated, unavoidable casualties, or any other causes beyond 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 SDSTA shall determine.
- B. Any claim for extension of time shall be made in writing to the SDSTA not more than ten (10) days after the commencement of the delay; otherwise it shall be deemed waived. In the case of continuing delay, only one claim is necessary.
- C. Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where the Work is to be performed.
- D. Contractor's right to make a claim or claims for an extension of time shall not preclude Contractor's right to make a claim for delay damages arising out of the SDSTA's significant interference, by action or inaction, with the Contractor's Work.

VII. CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY

Contractor assumes responsibility for implementing and monitoring all Environment, Health & Safety (EHS) precautions and programs related to the performance of the Work, as more fully set forth in attached Exhibit B, incorporated herein by reference.

VIII. WORK PLAN POLICY

- A. Contractor shall maintain a site work plan at all times. Safety and health shall be the top priority with all work plans.
- B. Contractor's work plan shall be reviewed with the SDSTA's Project Team prior to starting the Work. The Project Team shall include the Safety Liaison, Project Manager, and SDSTA's Representative. Any changes to the work plan shall be reviewed with the Project Team prior to making said change.
- B. A representative of the SDSTA's Project Team shall review the work plan daily on site with Contractor and its agents, employees, subcontractors and subconsultants prior to starting work for the day. The review shall emphasize safety and health as the top priority.

IX. OWNERSHIP, USE OF DOCUMENTS, CONFIDENTIALITY OF DOCUMENTS

- A. Any plans, specifications, engineering calculations, technical data, reports, miscellaneous drawings, and all information contained therein provided by the SDSTA, 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 SDSTA. 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 SDSTA, without the express written approval of the SDSTA. The SDSTA shall not unreasonably withhold such approval for dissemination of these materials as necessary to subcontractors and suppliers.
- B. All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided to or prepared by Contractor, its owners, officers, employees, agents, consultants, suppliers, and subcontractors in connection with Contractor's performance under this Contract 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 SDSTA.
- C. All documents covered by this article shall be delivered to the SDSTA's Representative 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 SDSTA and any documents that are retained, with or without SDSTA permission, shall be subject to all of the requirements of this Article.
- D. Contractor shall include the requirements of this article in any contract it enters into with any consultants, subcontractors, suppliers, persons, individuals, or entities for the performance of any of the Contractor's obligations under this Contract.

X. PAYMENTS AND INVOICING

- A. Progress Payments: Subject to the provisions of applicable law, the SDSTA shall make progress payments on a monthly basis for work accomplished in accordance with this Contract.
- B. Final Payment: Subject to the provisions of applicable law, final payment less amounts withheld to cover the cost of nonconforming work, shall be made by the SDSTA within thirty (30) days after the completion and acceptance of the Work by the SDSTA.
- C. Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance, the SDSTA's Project Representative or its authorized representative or both shall make such inspection with representatives of the Contractor and the SDSTA, and when it is found that the work is acceptable under the Contract and the Contract is fully performed as evidenced by inspection, the Project Representative shall promptly approve the voucher for payment.
- D. Contractor shall submit evidence satisfactory to the Project Representative that all claims of unpaid payrolls, material bills and other indebtedness connected with the work have been satisfied, prior to approval of the final payment.
- E. 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.
- F. **Invoicing:** Invoices or Payment Request Forms are to be addressed to the South Dakota Science and Technology Authority, 630 East Summit Street, Lead, SD, 57754, and may be submitted by email to: AP@sanfordlab.org. If possible, invoices are to be submitted to the SDSTA on the **3rd day** of the month for work performed in the previous month. Invoices received after the 3rd day of the month will be considered to have been received the following month.

XI. INDEPENDENT CONTRACTOR

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

XII. INDEMNITY

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

XIII. INSURANCE

- A. During the term of this Agreement, Contractor shall maintain in effect at all times, and provide proof of such coverage to the SDSTA, insurance as described on the attached Exhibit "A," which is incorporated herein by this reference. Contractor acknowledges that the South Dakota Science and Technology Authority, its officers, agents, employees and representatives are parties to this Contract and are therefore covered under Contractor's Blanket Endorsements.
- B. Prior to the commencement of Work, Contractor shall submit certificates of insurance policies to the Project Representative and the SDSTA for review and approval.
- C. By executing this Agreement, Contractor authorizes the SDSTA to make direct inquiry of Contractor's insurer or insurance agent concerning the status of the insurance required by this Agreement.

XIV. AMENDMENT PROVISION

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

XV. TERMINATION FOR CONVENIENCE

- A. The performance of this Contract depends upon the continued availability of appropriated funds and expenditure authority from state and federal sources. The SDSTA reserves the right to terminate this Contract in the event of a failure to obtain appropriated funds or grant expenditure authority. In this event, termination shall be made by written notice to Contractor. Termination for this reason is not a default by the SDSTA nor does it give rise to a claim against the SDSTA. In the event of termination of this Contract because of the unavailability of future funding, the SDSTA will make every effort to provide as much notice as possible to the Contractor. The SDSTA will be responsible for all work it authorizes the Contractor to perform, up to the date of Notice of Cancellation, and will cover all work in progress. In turn, the SDSTA would require the Contractor to make reasonable efforts to limit the SDSTA's liability for the work in progress.
- B. The SDSTA may terminate this Contract at any time without cause, in whole or in part, upon giving Contractor notice of such termination. Upon such termination, Contractor shall immediately cease work and remove from the project site all of its labor forces and such of its materials as the SDSTA elects not to purchase or to assume. 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 Contractor as a direct result of such termination. Contractor shall not be entitled to any compensation for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, the SDSTA shall have no further obligations to Contractor of any nature.

XVI. TERMINATION FOR DEFAULT

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

XVII. DISPUTES

- A. Governing Law: The Contract shall be governed by South Dakota law.
- B. Claims for Damages: Should either party to the Contract suffer injury or damage because of any act or omission of the other party or of any of the other party's employees, agents or others for whose acts the other party is legally liable, claim shall be made in writing to such other party within 14 days after the first observance of such injury or damage.
- C. All claims, counterclaims, disputes or other matters in question between the SDSTA and the Contractor arising out of, or relating to this Contract, or the breach thereof, will be decided in the state courts of South Dakota. Contractor irrevocably and unconditionally agrees to the exclusive jurisdiction of said courts and waives any objection thereto based on the doctrine of forum nonconveniens.
- D. Contractor shall carry on the Work and maintain its progress during any dispute or litigation proceedings, and the SDSTA shall continue to make payments to the Contractor to the extent required by the Contract Documents and South Dakota law.

XVIII. NOTICE:

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

- **If to Contractor:**

Name
Company
Street or PO Address
City, State Zip Code
Email address

- **If to SDSTA:**

Mike Headley
Executive Director
630 East Summit Street
Lead, SD 57754
MHeadley@sanfordlab.org

Timothy M. Engel
Counsel for the SDSTA
503 S. Pierre Street, P.O. Box 160
Pierre, SD 57501

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

XIX. MISCELLANEOUS

- A. Documents, information and data provided to the SDSTA pursuant to the terms of this Agreement may be subject to examination and review by representatives of the Homestake Mining Company of California pursuant to the terms of the Property Donation Agreement or by representatives of federal, state or local governmental entities, including, but not limited to, the South Dakota Department of Legislative Audit.

Anything elsewhere in this Agreement to the contrary notwithstanding, any such documents, information or data may become public records open to public inspection.

- B. The terms of this Agreement shall be construed and governed under the laws of the State of South Dakota. Any lawsuit arising out of or pertaining to the Agreement shall be commenced in the state courts of South Dakota. The Contractor shall not engage the services of any subcontractors without the prior express, written consent of the SDSTA. Time is of the essence in the performance of the covenants, terms and conditions of the Agreement. This Agreement constitutes the entire agreement of the parties concerning its subject matter, and supersedes any prior discussions, representations or agreements, wither oral or written. The terms of this Agreement may only be amended by a written document, executed with the same formalities as this Agreement.
- C. Any agreement entered into by the Contactor with any designer, consultant, subconsultant, contractor, subcontractor or other person to perform work in connection with this Agreement shall include the provisions and requirements of Articles III, VII, VIII, IX, XI, XII, XIII, XIX, XX, XXI, XXII and XXIII of this Agreement; provided, however, that the amount of general liability insurance required of the designer, consultant, subconsultant, contractor, subcontractor or other person shall be specified by the SDSTA in writing.
- D. Debarment or Suspension: By signing this Contract, the Contractor certifies to the best of its knowledge and belief that it and all persons associated with the Contract, including persons or corporations who have critical influence on or control over the Contract, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.
- E. Service Contract Act Requirements: In accordance with the clause of the General Provisions entitled Service Contract Act of 1965, As Amended (FAR 52.222-41), the Contractor shall pay its service employees, as defined, and ensure that service employees of lower-tier subcontractors are paid, not less than the minimum monetary wages, and shall furnish to them the fringe benefits, specified in the U.S. Department of Labor Wage Determination of this Contract, attached hereto as Exhibit H and incorporated by reference.
- F. Contractor agrees to use the E-Verify System (www.uscis.gov) to verify the employment eligibility of all employees assigned to this Contract and all new hires working in the United States, and to provide E-Verify documentation to the SDSTA within ten (10) days of execution of this Contract. If Contractor is a sole proprietorship with no employees, E-Verify is not required. Contractor further agrees to maintain an active registration, during the term of the Contract, with the System for Award Management (www.sam.gov).

XX. REPORTING

Contractor agrees to report to the SDSTA any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Contractor, the SDSTA or the SDSTA's officers, agents or employees to liability. Contractor shall report any such event to the SDSTA immediately upon discovery.

Contractor's obligation under this section shall only be to report the occurrence of any event to the SDSTA and to make any other report provided for by Contractor's duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications.) Reporting to the SDSTA under this Article shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

XXI. CONFLICTS OF INTEREST

Contractor agrees to avoid conflicts of interest, and to provide the SDSTA and the Project Representative with prompt written notification of any circumstances which may give rise to actual or apparent conflict of interest. The existence of an unresolved conflict of interest shall constitute cause to terminate this Agreement.

XXII. UNDERGROUND WORK:

- A. 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.
- B. 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** and incorporated herein by this reference.
- C. 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.

XXIII. COMPLIANCE WITH FEDERAL REGULATIONS

Contractor agrees that the FAR and DEAR clauses outlined in Exhibit E are hereby incorporated by reference as part of the terms and conditions of this Agreement.

IN WITNESS HERETO, the parties signify their agreement by signatures affixed below on the day and year above first written.

COMPANY

**SOUTH DAKOTA SCIENCE AND
TECHNOLOGY AUTHORITY**

By: _____
Name _____ Date _____
Title _____

Mike Headley _____ Date _____
Executive Director

EXHIBIT A

SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY 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. Errors & omissions liability coverage with limits not less than \$1 million per claim (where applicable.)
4. 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 CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY

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 Project, including materials and equipment incorporated into the Project or stored on-site or off-site. Contractor assumes responsibility for following all Environment, Safety and Health (ESH) precautions and programs related to the performance of the Project.

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 (1) days, 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. Contractor and its Subcontractors will immediately report to the Owner's Representative all non-incidental spills, and all other significant impacts to the environment (soil, water, air) in performance of the Project. Contractor will also immediately notify 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), as applicable. Site specific safety requirements are defined in the "Contractor Safety Manual," located at: <http://www.sanfordlab.org/ehs/manual>. <http://www.sanfordlab.org/ehs/manual/22-construction-ehs-manual-policy> MHSA 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 be accompanied at all times by an Owner's representative.

7. 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, developed with the Owner, must be completed and reviewed with the individual(s) expected to participate in the task(s) prior to beginning a specified task. Copies of JHAs must be present at the location where tasks are being performed and accessible to the individuals performing the tasks and to Owner representatives.

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

9. 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* may include:

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

10. 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.

11. 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.
- Note that current MSHA training certification is also acceptable.
- For all Contractors on site:
 1. Site Specific ESH Orientation and Training (plan for a 1 to 2-hour on-site training course conducted by Owner's representatives).
 2. Any other training requirements identified by the Contractor in its CESHP or by the Owner and communicated to the Contractor, during the bid process and Site Specific ESH Program review.

12. 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 stoppages will be at the expense of the Contractor and will not add time to the completion date of the Contract.

13. In the event of an incident, Owner 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 will facilitate the incident investigation with Contractor participation. Time and expense incurred by Contractor performing an incident investigation will be at the Contractor's expense.

14. 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.

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

16. 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.

17. 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.

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

19. 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

The South Dakota Science and Technology Authority is seeking quotations to furnish the labor, equipment, and all utility and transportation to provide property-wide HVAC services on an on-call basis. Work will be performed on the surface and underground.

- Bi-annual inspections (Fall & Spring) of HVAC units, smaller heaters and air conditioning unit's property-wide;
- Trouble-shoot and repair equipment as listed, and provide and install parts as needed.

Yates Complex

- Administration Building
 - RTU (4)
 - #1 Data NA, new in 2015
 - #2 RUUD Model RRGF-250125CKR
 - #3 RUUD Model RRGF-250100 CLR
 - #4 RUDD Model RRGF-250100 CLR
 - Mini Split for 2nd floor vault
 - Mitsubishi: Model PUZ-A42NHA6
 - Includes condensate pump in ceiling
 - IT Net Work Room AC head end units (2) – (exterior of Admin)
 - SANYO Model M/CHDX09053
 - Includes (5) discharge units (in the network room)
 - IT Network Room AC backup
 - Northwind Model KHX2452
 - Water heater
 - **TBD**
 - Education-Outreach
 - RTU (2) "RUDD" HVAC (6.5 ton – natural gas)
 - Name plate data is gone
 - Yates Head Frame shaft heaters
 - Yates Ramp Titan
 - TITAN Model 30-NG HRH
 - Yates Head Frame Titan
 - TITAN Model TA-133 NG HUH DA
 - Yates Hoist Room
 - Titan at East side
 - TITAN Model 30-NG-HRH
 - Heat wagon for cage hoist: **(currently out of order)**
 - Motor Repair
 - 1st Floor and 2nd Floor
- **Ross Complex**
 - Ross Head frame
 - Ross shaft heater Titan
 - TITAN Model TA-133 NG HUH DA
 - Ross warehouse
 - Radiant and forced air
 - Ross Dry
 - Meeting Room
 - REZNOR Model UDAP200

- Front office mini-split
 - Fujitsu: Model AOU24RLXFW
 - Shower-change room
 - ERT Room mini-split
 - Fujitsu: Model AOU24RLXFW
 - Water heaters (2)
 - ERT Storage Building
- Ross Hoist Room
 - Bat Cave mini-split
 - Fujitsu: Model AOU24RLXFW
 - Hoist Room (3)(units off line, new for 2017)
 - **New units will be under warranty until Fall of 2018**
 - New units are the BOSCH Buderus SSB 512 boilers
 - Includes an auto fill system with a water treatment generator
- **Water Treatment Complex**
 - Effluent Building
 - CO-RAY-VAC Unit off line – **to be replaced**
 - **Using a Fostoria unit – not to be part of the Service Agreement**
 - Influent Building
 - **Using 2 Fostoria units – not to be part of the Service Agreement**

for the underground units

- **4850 Area of Refuge AC Units:**
 - Units 1-2-3: Head End and Coolers (3)
 - Fujitsu Model 30CLX1
 - Dehumidifier condensate collections (2)

EXHIBIT D
CONTRACTOR'S RATE SHEET

EXHIBIT E
COMPLIANCE WITH FEDERAL REGULATIONS

EXHIBIT E
COMPLIANCE WITH FEDERAL ACTS

3. SUB-SUBCONTRACTS FOR COMMERCIAL ITEMS

3.1 DEFINITIONS. AS USED IN THIS CLAUSE—

(a) Commercial item has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

(b) Sub-subcontract includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or sub-subcontractor at any tier.

3.2 To the maximum extent practicable, the Subcontractor shall incorporate, and require its sub-subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

3.3 (a) The Subcontractor shall insert the following clauses in sub-subcontracts for commercial items:

- (i) Reserved – not applicable
- (ii) Reserved – not applicable
- (iv) Prohibition of Segregated Facilities (APR 2015).
- (v) 52.222-26, Equal Opportunity (APR 2015) (E.O. 11246).
- (xi) Minimum Wages under Executive Order 13658 (DEC 2015).
- (xii) Reserved – not applicable

Applies if PO exceeds \$10,000:

- (ix) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause 52.222-40.

Applies if PO exceeds \$15,000:

- (vii) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).

Applies if PO exceeds \$150,000:

- (vi) 52.222-35, Equal Opportunity for Veterans (OCT 2015) (38 U.S.C. 4212(a));
- (viii) 52.222-37, Employment Reports on Veterans (JUL 2014) (38 U.S.C. 4112).

Applies if PO exceeds \$500,000:

- (x) (A) 52.222-50, Combating Trafficking in Persons (MAR 2015) (22 U.S.C. chapter 78 and E.O. 13627).
- (B) Alternate I (MAR 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).

Applies if PO exceeds \$700,000:

- (iii) 52.219-8, Utilization of Small Business Concerns (OCT 2014) (15 U.S.C. 637(d)(2) and (3)), if the Subcontractor offers further Subcontracting opportunities. If the Subcontract (except Subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the Subcontractor must include 52.219-8 in lower tier Subcontracts that offer Subcontracting opportunities.

Applies if 50% of cargo is shipped to US via ocean vessel:

- (xiv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631), if flow down is required in accordance with paragraph (d) of FAR clause 52.247-64.

(b) While not required, the Subcontractor may flow down to Subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

3.4 The Subcontractor shall include the terms of this clause, including this paragraph 3.4, in Subcontracts awarded under this contract.

Contractor/vendor is responsible for reviewing full text of these clauses for applicability and compliance:

https://www.acquisition.gov/far/html/52_212_213.html#wp1179465

**SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY
SERVICES SUBCONTRACT
TERMS AND CONDITIONS**

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1. PAYMENTS

1.1 Every two weeks, the Subcontractor may submit to SDSTA invoices or vouchers for labor costs in such form and detail and supported by such documents as provided below. Once a month, the Subcontractor may submit to SDSTA invoices or vouchers for all other costs in such form and detail and supported by such documents as provided below. Within 30 days after receipt of each invoice or voucher SDSTA shall, subject to the provisions of this Subcontract, make payment thereon as approved by SDSTA.

1.2 In connection with any discount offered, time will be computed from the date of completion of the performance of the services or from the date correct invoice or voucher is received at the office specified by SDSTA, whichever is later. Payment is made, for discount purposes, when the check is mailed.

1.3 At any time prior to final settlement under this Subcontract, representatives of SDSTA or its designees will have access to and the right to audit Subcontractor's invoices, vouchers, statement of cost, books and records to determine the correctness and propriety of payments made under this Subcontract. Each payment theretofore made shall be subject to adjustment for amounts included in the related invoice or voucher on the basis of such audit. Any payment may be reduced for overpayments, or increased for under payments, on preceding invoices or vouchers.

1.4 APPLICABLE CREDITS.

The Subcontractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Subcontractor or any assignee under this Subcontract shall be paid by the Subcontractor to SDSTA, to the extent that they are properly allocable to costs for which the Subcontractor has been reimbursed by SDSTA under this Subcontract. Reasonable expenses incurred by the Subcontractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by SDSTA.

1.5 CLAIMS FOR PAYMENTS.

Claims for payment shall be accompanied by such supporting documents and justification as SDSTA shall require.

1.6 INVOICING.

(a) All invoices for labor shall show the crafts and classifications furnished, and the consolidated number of hours worked by each craft and classification against each Job Order. Consolidated invoices for labor and other costs submitted for payment shall be substantiated by individual daily job time cards showing the number of hours worked, approved by a representative of the technical section for whom the work is being accomplished and should refer to the

applicable Job Order number established by SDSTA. Subcontractor shall maintain detailed, complete, and accurate accounting records on a Job Order basis satisfactory to SDSTA.

(b) The Subcontractor shall submit invoices bearing this Subcontract number, in duplicate, to SDSTA, Accounts Payable, P.O. Box 500, Batavia, Illinois 60510.

2. WORKMANSHIP AND SAFETY

All work under this Subcontract shall be performed in a skillful, safe, and workmanlike manner. SDSTA may require (in writing) the Subcontractor to remove any employee which SDSTA deems incompetent, careless, or otherwise objectionable.

3. [RESERVED]

4. [RESERVED]

5. PERMITS

Except as otherwise directed by SDSTA, Subcontractor shall, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and municipal laws, codes, regulations, or directives and procedures issued by SDSTA in connection with the prosecution of work.

6. HAZARDOUS WASTE DISPOSAL

The Subcontractor shall comply with all applicable federal, state and local laws and regulations governing the transport, storage, treatment and disposal of regulated waste materials included in, or generated during the performance of this subcontract. The parties agree that all hazardous substances and waste are the property of the Subcontractor unless otherwise specified in a written agreement between SDSTA and SDSTA.

7. ENVIRONMENT, SAFETY AND HEALTH (ES&H)

7.1 APPLICABILITY.

This clause applies to all work under this subcontract

For the purpose of this clause:

(a) Safety encompasses environment, safety, and health, including pollution prevention and waste minimization; and

(b) Employees include sub-subcontractor employees at any tier.

7.2 ES&H POLICY.

Every Subcontractor employee is entitled to a safe and healthy work environment and the Subcontractor retains responsibility for the safety of its employees. In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall comply with all applicable federal, state and local laws and regulations governing the safety and health of employees and the environment. The Subcontractor shall exercise a degree of care

commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of ES&H functions and activities becomes an integral and visible part of the Subcontractor's work planning and execution process.

8. [RESERVED]

9. INDEMNIFICATION

9.1 The Subcontractor agrees to indemnify, save harmless, and defend Fermi Research Alliance, LLC, the University of Chicago, Universities Research Association, Inc., and the United States Government and their agents and employees from and against any and all liabilities, claims, damages, losses, penalties, forfeitures, fines, suits, and the costs and

expenses incident thereto (including costs of defense, settlement, and reasonable attorneys' fees), arising out of or resulting from negligent performance of this Subcontract, provided such liability, claim, damage, loss, penalty, forfeiture, fine, or suit is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of property, or contamination of or adverse effects on the environment, or to any violation of governmental laws, rules, regulations, or orders caused in whole or in part by :

(a) Subcontractor's breach of any term or provision of the Subcontract documents, or

(b) Any negligent or willful act or omission of the Subcontractor, its employees, agents, of Subcontractors, material suppliers, or anyone for whose acts they may be liable, regardless of whether such liability, claim, damage, loss, penalty, forfeiture, fine, or suit is caused in part by a party indemnified hereunder. The obligations of the Subcontractor under this clause 9.1 will survive the final completion or termination of this Subcontract.

9.2 Except to the extent covered by insurance required under this Subcontract and the indemnification provisions required under this Subcontract, the Subcontractor and SDSTA waive consequential damages for claims, disputes or other matters arising out of or relating to this Subcontract.

10. SERVICE CONTRACT ACT OF 1965, AS AMENDED

10.1 This Subcontract is subject to the Service Contract Act of 1965 as amended, (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued there under (29 CFR Part 4).

10.2 (a) Each service employee employed in the performance of this Subcontract by the Subcontractor or any sub-subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this Subcontract.

(b) If there is such a wage determination attached to this Subcontract, SDSTA shall require that any class of service employee which is not listed therein, and which is to be employed under this Subcontract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the Subcontractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and those listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph 10.2.

(c) Such conforming procedure shall be initiated by the Subcontractor prior to the performance of Subcontract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Subcontractor to SDSTA no later than 30 days after such unlisted class of employees performs any Subcontract work. SDSTA shall review the proposed action and promptly submit a report of the action, together with its recommendation and all pertinent information including the position of the Subcontractor and the employees, through the Department, to the Wage and Hour

Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Department within 30 days of receipt that additional time is necessary.

(d) The final determination of the conformance action by the Wage and Hour Division shall be transmitted through the Department, to SDSTA which shall promptly notify the Subcontractor of the action taken. Each affected employee shall be furnished by the Subcontractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(e) (i) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(ii) In the case of a Subcontract modification, an exercise of an option or extension of an existing Subcontract, or in any other case where a Sub-contractor succeeds a Subcontract under which the classification in question was

previously conformed pursuant to this paragraph 10.2, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the Subcontract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of Subcontract work by the unlisted class of employees, the Subcontractor shall advise SDSTA of the action taken but the other procedures in paragraph 10.2 (c) of this clause need not be followed.

(iii) No employee engaged in performing work on this Subcontract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(iv) The wage rate and fringe benefits finally determined pursuant to paragraphs 10.2 (b) and (c) of this clause shall be paid to all employees performing in the classification from the first day on which work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced Subcontract work shall be a violation of the Act and this Subcontract.

(f) Upon discovery of failure to comply with paragraphs 10.2 (b) through 10.2 (e) (4) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced Subcontract work.

10.3 If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965, as amended, the term of this Subcontract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after one year and not less often than once every two years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

10.4 The Subcontractor or sub-subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

10.5 In the absence of a minimum wage attachment for this Subcontract, neither the Subcontractor nor any sub- Subcontractor under this Subcontract shall pay any person performing work under the Subcontract (regardless of whether they are service employees) less than the minimum wage specified by section 6 (a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Subcontractor or any sub-subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

10.6 If this Subcontract succeeds a Subcontract, subject to the Service Contract Act of 1965, as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this Subcontract setting forth such collectively bargained wage rates and fringe benefits, neither the Subcontractor nor any sub-subcontractor under this Subcontract shall pay any service employee performing any of the Subcontract work (regardless of whether or not such employee was employed under the predecessor Subcontract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would be entitled if employed under the predecessor Subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Subcontractor or sub-subcontractor under this Subcontract may be relieved of the foregoing obligation unless the limitations of paragraph 4.1 b (b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in

§ 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in § 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor Subcontract was not entered into as a result of arms-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Subcontractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor Subcontract was not entered into as a result of arm's- length negotiations, the Department of Labor will issue a new or revised wage determination setting forth the

applicable wage rates and fringe benefits. Such determination shall be made part of the Subcontract or sub-subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a Subcontract or sub-subcontract (53 Comp. Gen 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

10.7 The Subcontractor and any sub-subcontractor under this Subcontract shall notify each service employee commencing work on this Subcontract of the minimum wage and any fringe benefits required to be paid pursuant to this Subcontract, or shall post the wage determination attached to this Subcontract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this Subcontract.

10.8 The Subcontractor or sub-subcontractor shall not permit any part of the services called for by this Subcontract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Subcontractor or sub-subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the Subcontractor or sub-subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

10.9 (a) The Subcontractor and each sub-subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, records containing the information specified in subparagraphs

a) through (vi) of this paragraph for each employee subject to the Act and shall make them available for

inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

- b) Name and address and social security number of each employee.
 - c) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.
 - d) The number of daily and weekly hours so worked by each employee.
 - e) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
 - f) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this Subcontract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the Labor Standards clause in paragraph 10.2 of this clause. A copy of the report required in paragraph 10.2 (c) of this clause shall be deemed to be such a list.
 - g) Any list of the predecessor Subcontractor's employees which had been furnished to the Subcontractor pursuant to paragraph 10.14(b) of this clause.
- (b) The Subcontractor shall also make available a copy of this Subcontract for inspection or transcription by authorized representatives of the Wage and Hour Division.
- (c) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this Subcontract, and in the case of failure to produce such records, SDSTA, upon direction of the Department of Labor and notification to the Subcontractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.
- (d) The Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

10.10 The Subcontractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

10.11 There shall be withheld or caused to be withheld from the Subcontractor under this Subcontract or any other Subcontract or Government contract with the Subcontractor such sums as an appropriate officer of the Department of Labor requests, or such sums as may be necessary to pay underpaid employees employed by the Subcontractor or any sub-subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, SDSTA may, after authorization or by direction of the Department of Labor and written notification to the Subcontractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the Subcontract work. In such event, SDSTA may enter into other Subcontracts or arrangements for completion of the work, charging the Subcontractor in default with any additional cost.

10.12 The Subcontractor agrees to insert these clauses relating to the Service Contract Act of 1965 in all sub- Subcontracts subject to the Act.

10.13 SERVICE EMPLOYEE.

As used in clause 10, the term "service employee" means any person engaged in the performance of this Subcontract (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29 Code of Federal Regulations, as revised). The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a Subcontractor or sub- subcontractor and such persons.

10.14 (a) If wages to be paid or fringe benefits to be furnished any service employees employed by the Subcontractor or any sub-subcontractor under the Subcontract are provided for in a collective bargaining agreement which is or will be effective during any period in which the Subcontract is being performed, the Subcontractor shall report such fact to SDSTA, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees

engaged in work on the Subcontract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the Subcontract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of Subcontract performance, such agreements shall be reported promptly after negotiation thereof.

(b) Not less than 10 days prior to completion of this Subcontract, the Subcontractor shall furnish to SDSTA a certified list of the names of all service employees on the Subcontractor's or sub-subcontractor's payroll during the last month of Subcontract performance. Such list shall also contain anniversary dates of employment on the Subcontract either with the current or predecessor Subcontractors of each such service employee. SDSTA shall turn over such list to the successor Subcontractor at the commencement of the succeeding Subcontract.

10.15 Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

10.16 (a) By entering into this Subcontract, the Subcontractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(b) No part of this Subcontract shall be sub-subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

10.17 Notwithstanding any of the provisions in paragraphs 10.2 through 10.15 of this clause, relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exceptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(a) (i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof) applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525);

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

10.18 Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen

employed on the Subcontract work in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to his entire work force under the registered program.

10.19 An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531; provided, however, that the amount of such credit may not exceed \$1.34 per hour. To utilize this proviso:

- (a) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (b) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (c) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;
- (d) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

10.20 Disputes arising out of the labor standards provisions of this Subcontract shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its sub-subcontractors) and SDSTA, the Department, the U.S. Department of Labor, or the employees or their representatives.

11. [RESERVED]

12. [RESERVED]

13. EXTRAS

Except as otherwise provided in this Subcontract, no payment for extras shall be made unless such extras and the price there-for have been authorized in writing by SDSTA.

14. [RESERVED]

15. FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENT

15.1 This clause applies to both Subcontracts subject to area prevailing wage determinations and Subcontracts subject to Subcontractor collective bargaining agreements.

15.2 The Subcontractor warrants that the prices in this Subcontract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

15.3 The Subcontract price or Subcontract unit price labor rates will be adjusted to reflect increases or decreases by the Subcontractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with -

- (a) An increased or decreased wage determination applied to this Subcontract by operation of law; or
- (b) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this Subcontract, affects the minimum wage, and becomes applicable to this Subcontract under law.

15.4 Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph 15.3 of this clause, and to the accompanying increases or decreases in social security and unemployment

taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

15.5 The Subcontractor shall notify SDSTA of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by SDSTA in writing. The

Subcontractor shall promptly notify SDSTA of any decrease under this clause, but nothing in the clause shall preclude SDSTA from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that SDSTA may reasonably require. Upon agreement of the parties, the Subcontract price or Subcontract unit price labor rates shall be modified in writing. The Subcontractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

15.6 SDSTA or an authorized representative shall, until the expiration of 3 years after final payment under the Subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor.

NOTE: The following paragraphs 15.7, 15.8, 15.9 and 15.10 apply only in the event this Subcontract is a multiple year Subcontract or a Subcontract containing an option(s) to renew for an additional period(s). In that event, they apply in lieu of paragraphs 15.3, 15.4, and 15.5 above.

15.7 The wage determination, issued under the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year Subcontract or the beginning of each renewal option period, shall apply to this Subcontract. If no such determination has been made applicable to this Subcontract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206) current on the anniversary date of a multiple year Subcontract or the beginning of each renewal option period, shall apply to this Subcontract.

15.8 The Subcontract price or Subcontract unit price labor rates will be adjusted to reflect the Subcontractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Subcontractor as a result of:

- (a) The Department of Labor wage determination applicable on the anniversary date of multiple year Subcontract, or at the beginning of the renewal option period. For example, the prior wage determination required a minimum wage rate of \$4.00 per hour. The Subcontractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Subcontractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
- (b) An increased or decreased wage determination otherwise applied to the Subcontract by operation of law; or
- (c) An amendment to the Fair Labor Standards Act of 1938 that is enacted after the award of this Subcontract, affects the minimum wage, and becomes applicable to this Subcontract under law.

15.9 Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph

15.8 of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general administrative costs, overhead, or profit.

15.10 The Subcontractor shall notify SDSTA of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by SDSTA. The Subcontractor shall promptly notify SDSTA of any decrease under this clause, but nothing in this clause shall preclude SDSTA from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that SDSTA may reasonably require. Upon agreement of the parties, the Subcontract price or Subcontract unit price labor rates shall be modified in writing. The Subcontractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

16. INSPECTION OF SERVICES

16.1 DEFINITION. "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

16.2 The Subcontractor shall provide and maintain an inspection system acceptable to SDSTA covering

the services under this Subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to SDSTA during contract performance and for as long afterwards as the contract requires.

16.3 SDSTA has the right to inspect and test all services called for by the Subcontract, to the extent practicable at all places and times during the term of the contract. SDSTA shall perform inspections and tests in a manner that will not unduly delay the work.

16.4 If any of the services performed do not conform with Subcontract requirements, SDSTA may require the Subcontractor to perform the services again in conformity with Subcontract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, SDSTA may require the Subcontractor to take necessary action to ensure that future performance conforms to Subcontract requirements.

16.5 If the Subcontractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, SDSTA may—

- (a) By Subcontract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or
- (b) Terminate the Subcontract for default.

17. BUY AMERICAN ACT – SUPPLIES

17.1 Definitions. As used in this clause—

- (a) “Commercially available off-the-shelf (COTS) item”—
 - (i) Means any item of supply (including construction material) that is—
 - (A) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (B) Sold in substantial quantities in the commercial marketplace; and
 - (C) Offered to SDSTA, under a contract or Subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
 - (ii) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.
- (b) “Component” means an article, material, or supply incorporated directly into an end product.
- (c) “Cost of components” means—
 - (i) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (ii) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph 17.1(c)(i) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- (d) “Domestic end product” means—
 - (i) An unmanufactured end product mined or produced in the United States;
 - (ii) An end product manufactured in the United States, if—
 - (A) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or
 - (B) The end product is a COTS item.
- (e) “End product” means those articles, materials, and supplies to be acquired under the contract for public use.
- (f) “Foreign end product” means an end product other than a domestic end product.
- (g) “United States” means the 50 States, the District of Columbia, and outlying areas.

17.2 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for an end product that is a COTS item (See 12.505(a)(1)).

17.3 Offerors may obtain from the Procurement Administrator a list of foreign articles that the Procurement Administrator will treat as domestic for this contract.

17.4 The Subcontractor shall use only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Certificate."

18. [RESERVED]

19. [RESERVED]

20. MINIMUM WAGES UNDER EXECUTIVE ORDER 13658

20.1 DEFINITIONS. AS USED IN THIS CLAUSE—

(a) "United States" means the 50 states and the District of Columbia.

(b) "Worker"—

(i) Means any person engaged in performing work on, or in connection with, a Subcontract covered by Executive Order 13658, and

(A) Whose wages under such Subcontract are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(B) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541,

(C) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(ii) Includes workers performing on, or in connection with, the Subcontract whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c).

(iii) Also includes any person working on, or in connection with, the Subcontract and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

20.2 EXECUTIVE ORDER MINIMUM WAGE RATE.

(a) The Subcontractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this Subcontract, a minimum hourly wage rate of \$10.10 per hour beginning January 1, 2015.

(b) The Subcontractor shall adjust the minimum wage paid, if necessary, beginning January 1, 2016 and annually thereafter, to meet the Secretary of Labor's annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor Web site) and on all wage determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this Subcontract.

(c) (i) The Subcontractor may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual

E.O. minimum wage, and for associated labor costs and relevant sub-subcontract costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Sub-subcontractors may be entitled to adjustments due to the new minimum wage, pursuant

to paragraph 20.2(b). Subcontractors shall consider any sub-subcontractor requests for such price adjustment.

(iii) The Procurement Administrator will not adjust the Subcontract price under this clause for any costs other than those identified in paragraph 20.2(c)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(d) The Subcontractor warrants that the prices in this Subcontract do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(e) A pay period under this clause may not be longer than semi-monthly, but may be shorter to comply with any applicable law or other requirement under this Subcontract establishing a shorter pay period. Workers shall be paid no later than one pay period following the end of the regular pay period in which such wages were earned or accrued.

(f) The Subcontractor shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The Subcontractor may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with 29 CFR 10.23, Deductions.

(g) The Subcontractor shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(h) Nothing in this clause shall excuse the Subcontractor from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(i) The Subcontractor shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(j) The Subcontractor shall follow the policies and procedures in 29 CFR 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

20.3 (a) This clause applies to workers as defined in paragraph 20.1. As provided in that definition—

(A) Workers are covered regardless of the contractual relationship alleged to exist between the Subcontractor or sub-subcontractor and the worker;

(B) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c) are covered; and

(C) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship, are covered.

(b) This clause does not apply to—

(i) Fair Labor Standards Act (FLSA)-covered individuals performing in connection with Subcontracts covered by the E.O., *i.e.* those individuals who perform duties necessary to the performance of the Subcontract, but who are not directly engaged in performing the specific work called for by the Subcontract, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such Subcontracts;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(a).

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(b).

(C) Those employed in a bona fide executive, administrative, or professional capacity (29

U.S.C. 213(a)(1) and 29 CFR part 541).

20.4 NOTICE. The Subcontractor shall notify all workers performing work on, or in connection with, this Subcontract of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Subcontractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the Subcontractor shall post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Subcontractors that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the Subcontractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

20.5 PAYROLL RECORDS.

(a) The Subcontractor shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

- (i) Name, address, and social security number;
- (ii) The worker's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid;
- (iv) The number of daily and weekly hours worked by each worker;
- (v) Any deductions made; and
- (vi) Total wages paid.

(b) The Subcontractor shall make records pursuant to paragraph 20.5(a) of this clause available for inspection and transcription by authorized representatives of the Administrator. The Subcontractor shall also make such records available upon request of the Procurement Administrator.

(c) The Subcontractor shall make a copy of the Subcontract available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(d) Failure to comply with this paragraph 20.5 shall be a violation of 29 CFR 10.26 and this Subcontract. Upon direction of the Administrator or upon the Procurement Administrator's own action, payment shall be withheld until such time as the noncompliance is corrected.

(e) Nothing in this clause limits or otherwise modifies the Subcontractor's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

20.6 ACCESS. The Subcontractor shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

20.7 WITHHOLDING. The Procurement Administrator, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the Subcontractor under this or any other Federal Subcontract with the same Subcontractor, sufficient to pay workers the full amount of wages required by this clause.

20.8 DISPUTES. Department of Labor has set forth in 29 CFR 10.51, Disputes concerning Subcontractor compliance, the procedures for resolving disputes concerning a Subcontractor's compliance with Department of Labor regulations at 29 CFR part 10. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this Subcontract. These disputes include disputes between the Subcontractor (or any of its sub-subcontractors) and the contracting agency, the Department of Labor, or the workers or their representatives.

20.9 ANTIRETALIATION. The Subcontractor shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

20.10 SUB-SUBCONTRACTOR COMPLIANCE. The Subcontractor is responsible for sub-subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due sub-subcontractor workers.

20.11 SUB-SUBCONTRACTS. The Subcontractor shall include the substance of this clause, including this

paragraph 20.11 in all sub-subcontracts, regardless of dollar value, that are subject to the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, and are to be performed in whole or in part in the United States.

21. SERVICE CONTRACT REPORTING REQUIREMENTS

21.1 As used in this clause, “Subcontract” means a Subcontract awarded directly by SDSTA for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include SDSTA’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to SDSTA’s general and administrative expenses or indirect costs.

21.2 The Subcontractor providing services under this Subcontract, with Subcontracts valued at or above the thresholds set forth in paragraph 21.3 must report the information in paragraph 21.4 at www.sam.gov, annually by October 31. If the Subcontractor fails to submit the report in a timely manner, the Procurement Administrator will exercise appropriate contractual remedies.

21.3 Reporting is required according to the following thresholds:

- (a) All cost-reimbursement, time-and-materials, and labor-hour service contracts and orders with an estimated total value above the simplified acquisition threshold.
- (b) All fixed-price service contracts awarded and orders issued according to the following thresholds:
 - (i) Awarded or issued in Fiscal Year 2014, with an estimated total value of \$2.5 million or greater.
 - (ii) Awarded or issued in Fiscal Year 2015, with an estimated total value of \$1 million or greater.
 - (iii) Awarded or issued in Fiscal Year 2016, and subsequent years, with an estimated total value of \$500,000 or greater.

21.4 The Subcontractor must report the following information:

- (a) Subcontract number (including Subcontractor name and DUNS number); and
- (b) The number of Subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

21.5 The information in paragraph 21.3 will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

EXHIBIT F
DEPARTMENT OF LABOR
WAGE DETERMINATION

15-5377

WD 15-5377 (Rev.-2) was first posted on www.wdol.gov on 01/03/2017

REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON D.C. 20210

Daniel W. Simms Division of
Director Wage Determinations

Wage Determination No.: 2015-5377
Revision No.: 2
Date Of Revision: 12/30/2016

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Service Contract 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 per hour (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.

State: South Dakota

Area: South Dakota Counties of Bennett, Butte, Corson, Dewey, Fall River, Gregory, Haakon, Harding, Jackson, Jones, Lawrence, Lyman, Mellette, Perkins, Shannon, Stanley, Todd, Tripp, Ziebach

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		11.79
01012 - Accounting Clerk II		13.24
01013 - Accounting Clerk III		15.35
01020 - Administrative Assistant		17.58
01035 - Court Reporter		15.49
01041 - Customer Service Representative I		11.84
01042 - Customer Service Representative II		13.31
01043 - Customer Service Representative III		14.52
01051 - Data Entry Operator I		10.58
01052 - Data Entry Operator II		11.99
01060 - Dispatcher, Motor Vehicle		13.95
01070 - Document Preparation Clerk		11.05
01090 - Duplicating Machine Operator		11.05
01111 - General Clerk I		10.33
01112 - General Clerk II		11.27
01113 - General Clerk III		12.65
01120 - Housing Referral Assistant		15.88
01141 - Messenger Courier		9.33
01191 - Order Clerk I		10.95
01192 - Order Clerk II		11.95
01261 - Personnel Assistant (Employment) I		13.27
01262 - Personnel Assistant (Employment) II		14.99
01263 - Personnel Assistant (Employment) III		17.38
01270 - Production Control Clerk		16.37
01290 - Rental Clerk		9.88
01300 - Scheduler, Maintenance		12.37
01311 - Secretary I		12.37
01312 - Secretary II		13.84
01313 - Secretary III		15.88
01320 - Service Order Dispatcher		13.03

01410 - Supply Technician	17.58
01420 - Survey Worker	12.48
01460 - Switchboard Operator/Receptionist	10.87
01531 - Travel Clerk I	11.47
01532 - Travel Clerk II	12.17
01533 - Travel Clerk III	12.87
01611 - Word Processor I	11.02
01612 - Word Processor II	12.37
01613 - Word Processor III	13.84
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	17.15
05010 - Automotive Electrician	16.37
05040 - Automotive Glass Installer	15.61
05070 - Automotive Worker	15.61
05110 - Mobile Equipment Servicer	14.01
05130 - Motor Equipment Metal Mechanic	17.15
05160 - Motor Equipment Metal Worker	15.61
05190 - Motor Vehicle Mechanic	17.15
05220 - Motor Vehicle Mechanic Helper	13.22
05250 - Motor Vehicle Upholstery Worker	14.81
05280 - Motor Vehicle Wrecker	15.61
05310 - Painter, Automotive	16.37
05340 - Radiator Repair Specialist	15.61
05370 - Tire Repairer	11.10
05400 - Transmission Repair Specialist	17.15
07000 - Food Preparation And Service Occupations	
07010 - Baker	11.46
07041 - Cook I	11.16
07042 - Cook II	12.81
07070 - Dishwasher	8.77
07130 - Food Service Worker	9.35
07210 - Meat Cutter	13.03
07260 - Waiter/Waitress	8.50
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	18.34
09040 - Furniture Handler	12.28
09080 - Furniture Refinisher	18.34
09090 - Furniture Refinisher Helper	14.61
09110 - Furniture Repairer, Minor	16.58
09130 - Upholsterer	16.68
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	9.49
11060 - Elevator Operator	10.47
11090 - Gardener	14.04
11122 - Housekeeping Aide	10.72
11150 - Janitor	10.72
11210 - Laborer, Grounds Maintenance	11.27
11240 - Maid or Houseman	9.35
11260 - Pruner	10.23
11270 - Tractor Operator	13.41
11330 - Trail Maintenance Worker	11.27
11360 - Window Cleaner	11.31
12000 - Health Occupations	
12010 - Ambulance Driver	14.04
12011 - Breath Alcohol Technician	16.21
12012 - Certified Occupational Therapist Assistant	20.34
12015 - Certified Physical Therapist Assistant	20.34
12020 - Dental Assistant	15.80
12025 - Dental Hygienist	29.23
12030 - EKG Technician	24.89
12035 - Electroneurodiagnostic Technologist	24.89
12040 - Emergency Medical Technician	14.04
12071 - Licensed Practical Nurse I	13.81

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12072 - Licensed Practical Nurse II	15.44
12073 - Licensed Practical Nurse III	17.23
12100 - Medical Assistant	12.90
12130 - Medical Laboratory Technician	17.11
12160 - Medical Record Clerk	14.31
12190 - Medical Record Technician	16.56
12195 - Medical Transcriptionist	13.65
12210 - Nuclear Medicine Technologist	32.58
12221 - Nursing Assistant I	10.36
12222 - Nursing Assistant II	11.65
12223 - Nursing Assistant III	12.72
12224 - Nursing Assistant IV	14.27
12235 - Optical Dispenser	14.44
12236 - Optical Technician	13.55
12250 - Pharmacy Technician	14.49
12280 - Phlebotomist	14.27
12305 - Radiologic Technologist	23.89
12311 - Registered Nurse I	20.31
12312 - Registered Nurse II	24.84
12313 - Registered Nurse II, Specialist	24.84
12314 - Registered Nurse III	30.05
12315 - Registered Nurse III, Anesthetist	30.05
12316 - Registered Nurse IV	36.03
12317 - Scheduler (Drug and Alcohol Testing)	20.09
12320 - Substance Abuse Treatment Counselor	17.36
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	13.72
13012 - Exhibits Specialist II	17.00
13013 - Exhibits Specialist III	20.78
13041 - Illustrator I	13.72
13042 - Illustrator II	17.00
13043 - Illustrator III	20.78
13047 - Librarian	18.82
13050 - Library Aide/Clerk	10.92
13054 - Library Information Technology Systems Administrator	17.00
13058 - Library Technician	12.29
13061 - Media Specialist I	13.02
13062 - Media Specialist II	14.56
13063 - Media Specialist III	16.24
13071 - Photographer I	12.70
13072 - Photographer II	14.21
13073 - Photographer III	17.60
13074 - Photographer IV	21.54
13075 - Photographer V	26.05
13090 - Technical Order Library Clerk	15.49
13110 - Video Teleconference Technician	12.78
14000 - Information Technology Occupations	
14041 - Computer Operator I	11.60
14042 - Computer Operator II	12.97
14043 - Computer Operator III	15.41
14044 - Computer Operator IV	16.16
14045 - Computer Operator V	20.32
14071 - Computer Programmer I	(see 1)
14072 - Computer Programmer II	(see 1)
14073 - Computer Programmer III	(see 1)
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1)
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	11.60
14160 - Personal Computer Support Technician	24.25
14170 - System Support Specialist	25.08

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15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	29.28
15020 - Aircrew Training Devices Instructor (Rated)	33.61
15030 - Air Crew Training Devices Instructor (Pilot)	40.44
15050 - Computer Based Training Specialist / Instructor	29.28
15060 - Educational Technologist	26.05
15070 - Flight Instructor (Pilot)	40.44
15080 - Graphic Artist	17.93
15085 - Maintenance Test Pilot, Fixed, Jet/Prop	39.56
15086 - Maintenance Test Pilot, Rotary Wing	39.56
15088 - Non-Maintenance Test/Co-Pilot	39.56
15090 - Technical Instructor	16.89
15095 - Technical Instructor/Course Developer	19.75
15110 - Test Proctor	13.04
15120 - Tutor	13.04
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	9.30
16030 - Counter Attendant	9.30
16040 - Dry Cleaner	10.86
16070 - Finisher, Flatwork, Machine	9.30
16090 - Presser, Hand	9.30
16110 - Presser, Machine, Drycleaning	9.30
16130 - Presser, Machine, Shirts	9.30
16160 - Presser, Machine, Wearing Apparel, Laundry	9.30
16190 - Sewing Machine Operator	11.45
16220 - Tailor	12.04
16250 - Washer, Machine	9.86
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	17.53
19040 - Tool And Die Maker	22.19
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	14.47
21030 - Material Coordinator	18.01
21040 - Material Expediter	18.01
21050 - Material Handling Laborer	10.78
21071 - Order Filler	9.75
21080 - Production Line Worker (Food Processing)	14.47
21110 - Shipping Packer	12.96
21130 - Shipping/Receiving Clerk	12.96
21140 - Store Worker I	11.16
21150 - Stock Clerk	15.01
21210 - Tools And Parts Attendant	14.47
21410 - Warehouse Specialist	14.47
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	24.83
23019 - Aircraft Logs and Records Technician	18.84
23021 - Aircraft Mechanic I	22.12
23022 - Aircraft Mechanic II	24.83
23023 - Aircraft Mechanic III	25.95
23040 - Aircraft Mechanic Helper	16.54
23050 - Aircraft, Painter	19.31
23060 - Aircraft Servicer	18.84
23070 - Aircraft Survival Flight Equipment Technician	19.31
23080 - Aircraft Worker	20.00
23091 - Aircrew Life Support Equipment (ALSE) Mechanic I	20.00
23092 - Aircrew Life Support Equipment (ALSE) Mechanic II	22.12
23110 - Appliance Mechanic	18.33
23120 - Bicycle Repairer	11.40
23125 - Cable Splicer	27.02
23130 - Carpenter, Maintenance	14.72
23140 - Carpet Layer	17.25

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23160 - Electrician, Maintenance	21.33
23181 - Electronics Technician Maintenance I	19.60
23182 - Electronics Technician Maintenance II	20.83
23183 - Electronics Technician Maintenance III	22.04
23260 - Fabric Worker	16.30
23290 - Fire Alarm System Mechanic	19.40
23310 - Fire Extinguisher Repairer	15.79
23311 - Fuel Distribution System Mechanic	23.27
23312 - Fuel Distribution System Operator	18.18
23370 - General Maintenance Worker	15.30
23380 - Ground Support Equipment Mechanic	22.12
23381 - Ground Support Equipment Servicer	18.84
23382 - Ground Support Equipment Worker	20.00
23391 - Gunsmith I	15.79
23392 - Gunsmith II	18.08
23393 - Gunsmith III	20.33
23410 - Heating, Ventilation And Air-Conditioning Mechanic	18.14
23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)	19.18
23430 - Heavy Equipment Mechanic	21.12
23440 - Heavy Equipment Operator	18.21
23460 - Instrument Mechanic	20.33
23465 - Laboratory/Shelter Mechanic	19.22
23470 - Laborer	10.78
23510 - Locksmith	18.47
23530 - Machinery Maintenance Mechanic	20.21
23550 - Machinist, Maintenance	16.26
23580 - Maintenance Trades Helper	14.58
23591 - Metrology Technician I	20.33
23592 - Metrology Technician II	21.40
23593 - Metrology Technician III	22.45
23640 - Millwright	19.22
23710 - Office Appliance Repairer	19.15
23760 - Painter, Maintenance	15.55
23790 - Pipefitter, Maintenance	19.49
23810 - Plumber, Maintenance	18.37
23820 - Pneudraulic Systems Mechanic	20.33
23850 - Rigger	20.33
23870 - Scale Mechanic	18.08
23890 - Sheet-Metal Worker, Maintenance	18.15
23910 - Small Engine Mechanic	17.25
23931 - Telecommunications Mechanic I	24.58
23932 - Telecommunications Mechanic II	25.99
23950 - Telephone Lineman	21.52
23960 - Welder, Combination, Maintenance	15.52
23965 - Well Driller	17.64
23970 - Woodcraft Worker	20.33
23980 - Woodworker	15.79
24000 - Personal Needs Occupations	
24550 - Case Manager	11.64
24570 - Child Care Attendant	9.12
24580 - Child Care Center Clerk	12.39
24610 - Chore Aide	10.08
24620 - Family Readiness And Support Services Coordinator	11.64
24630 - Homemaker	15.00
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	19.26
25040 - Sewage Plant Operator	17.80
25070 - Stationary Engineer	19.26
25190 - Ventilation Equipment Tender	14.03
25210 - Water Treatment Plant Operator	17.80

27000 - Protective Service Occupations	
27004 - Alarm Monitor	14.81
27007 - Baggage Inspector	11.04
27008 - Corrections Officer	15.39
27010 - Court Security Officer	18.09
27030 - Detection Dog Handler	14.45
27040 - Detention Officer	15.39
27070 - Firefighter	17.46
27101 - Guard I	11.04
27102 - Guard II	13.38
27131 - Police Officer I	18.61
27132 - Police Officer II	20.67
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	11.30
28042 - Carnival Equipment Repairer	12.06
28043 - Carnival Worker	9.23
28210 - Gate Attendant/Gate Tender	15.49
28310 - Lifeguard	11.34
28350 - Park Attendant (Aide)	17.33
28510 - Recreation Aide/Health Facility Attendant	12.65
28515 - Recreation Specialist	17.69
28630 - Sports Official	13.81
28690 - Swimming Pool Operator	17.67
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	18.12
29020 - Hatch Tender	18.12
29030 - Line Handler	18.12
29041 - Stevedore I	16.94
29042 - Stevedore II	19.31
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	36.92
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	25.46
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	28.04
30021 - Archeological Technician I	14.57
30022 - Archeological Technician II	16.30
30023 - Archeological Technician III	20.20
30030 - Cartographic Technician	20.01
30040 - Civil Engineering Technician	19.14
30051 - Cryogenic Technician I	21.67
30052 - Cryogenic Technician II	23.93
30061 - Drafter/CAD Operator I	14.57
30062 - Drafter/CAD Operator II	16.30
30063 - Drafter/CAD Operator III	18.18
30064 - Drafter/CAD Operator IV	22.36
30081 - Engineering Technician I	12.70
30082 - Engineering Technician II	14.26
30083 - Engineering Technician III	16.28
30084 - Engineering Technician IV	19.77
30085 - Engineering Technician V	24.17
30086 - Engineering Technician VI	29.25
30090 - Environmental Technician	18.90
30095 - Evidence Control Specialist	19.56
30210 - Laboratory Technician	17.61
30221 - Latent Fingerprint Technician I	21.67
30222 - Latent Fingerprint Technician II	23.93
30240 - Mathematical Technician	20.20
30361 - Paralegal/Legal Assistant I	17.18
30362 - Paralegal/Legal Assistant II	21.30
30363 - Paralegal/Legal Assistant III	26.06
30364 - Paralegal/Legal Assistant IV	31.53
30375 - Petroleum Supply Specialist	23.93
30390 - Photo-Optics Technician	20.20
30395 - Radiation Control Technician	23.93

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30461 - Technical Writer I	21.02
30462 - Technical Writer II	25.71
30463 - Technical Writer III	31.10
30491 - Unexploded Ordnance (UXO) Technician I	23.46
30492 - Unexploded Ordnance (UXO) Technician II	28.39
30493 - Unexploded Ordnance (UXO) Technician III	34.03
30494 - Unexploded (UXO) Safety Escort	23.46
30495 - Unexploded (UXO) Sweep Personnel	23.46
30501 - Weather Forecaster I	21.67
30502 - Weather Forecaster II	26.36
30620 - Weather Observer, Combined Upper Air Or	(see 2) 18.18
Surface Programs	
30621 - Weather Observer, Senior	(see 2) 20.20
31000 - Transportation/Mobile Equipment Operation Occupations	
31010 - Airplane Pilot	28.39
31020 - Bus Aide	10.38
31030 - Bus Driver	13.90
31043 - Driver Courier	11.71
31260 - Parking and Lot Attendant	10.36
31290 - Shuttle Bus Driver	13.61
31310 - Taxi Driver	11.67
31361 - Truckdriver, Light	13.61
31362 - Truckdriver, Medium	14.53
31363 - Truckdriver, Heavy	16.45
31364 - Truckdriver, Tractor-Trailer	16.45
99000 - Miscellaneous Occupations	
99020 - Cabin Safety Specialist	13.84
99030 - Cashier	9.31
99050 - Desk Clerk	9.72
99095 - Embalmer	24.34
99130 - Flight Follower	23.46
99251 - Laboratory Animal Caretaker I	13.13
99252 - Laboratory Animal Caretaker II	14.07
99260 - Marketing Analyst	25.78
99310 - Mortician	24.34
99410 - Pest Controller	18.19
99510 - Photofinishing Worker	12.33
99710 - Recycling Laborer	13.04
99711 - Recycling Specialist	15.23
99730 - Refuse Collector	11.92
99810 - Sales Clerk	11.46
99820 - School Crossing Guard	12.45
99830 - Survey Party Chief	18.50
99831 - Surveying Aide	11.91
99832 - Surveying Technician	15.49
99840 - Vending Machine Attendant	14.12
99841 - Vending Machine Repairer	16.94
99842 - Vending Machine Repairer Helper	12.89

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors, applies to all contracts subject to the Service Contract 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 the 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.

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$4.27 per hour or \$170.80 per week or \$740.13 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor, 3 weeks after 10 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (See 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year: New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4.174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime

(i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

**** HAZARDOUS PAY DIFFERENTIAL ****

An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, dying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving re-grading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

**** SERVICE CONTRACT ACT DIRECTORY OF OCCUPATIONS ****

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition (Revision 1), dated September 2015, unless otherwise indicated.

**** REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE, Standard Form 1444 (SF-1444) ****

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination (See 29 CFR 4.6(b)(2)(i)). Such conforming procedures shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees (See 29 CFR 4.6(b)(2)(ii)). The Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be paid to all employees performing in the classification from the first day of work on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or fully determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract. (See 29 CFR 4.6(b)(2)(v)). When multiple wage determinations are included in a contract, a separate SF-1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order the proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the U.S. Department of Labor, Wage and Hour Division, for review (See 29 CFR 4.6(b)(2)(ii)).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour Division's decision to the contractor.
- 6) Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination (See 29 CFR 4.6(b)(2)(iii)).

Information required by the Regulations must be submitted on SF-1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" should be used to compare job definitions to ensure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination (See 29 CFR 4.152(c)(1)).

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 SIC 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

[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

[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: _____

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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 ____ day of _____, 20____, by COMPANY NAME (“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:

Company Name

Address

City, State Zip Code

(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: 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 NAME

By _____
Its _____

(SEAL)
ATTEST:

By _____
Its _____