

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: DEEP WELL PUMP
Contract #2017-37

THIS CONTRACT, made effective the **XX**th day of **Month**, 201**X**, 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.
 - Payment and Performance Bond as Exhibit G
 - Acknowledgement of Risk and Release, Agreement not to Sue, and Waiver attached as Exhibit H.
 - Release, Agreement not to Sue, and Waiver in favor of the Homestake Indemnified Parties, attached as Exhibit I.
 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.
- E. Should the Contractor fail to substantially complete the installation within a 10-week time frame after a notice has been given that a pump has failed in Contract Documents, or within such extra time as may have been allowed by increases in the Contract or by formally approved extensions granted by the Owner, the Contractor and the Contractor's surety shall be liable for and shall pay the Owner **\$50 for every \$100,000 of total contract value** as liquidated damages for each calendar day of delay until the Work is substantially complete. This sum is not a penalty but is liquidated damages due the Owner from the Contractor by reason of inconvenience to the Owner, added cost of engineering and supervision, and other items which have caused an expenditure of funds resulting from the Contractor's failure to complete the Work within the time specified in the Contract.

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.
- C. 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 nonconveniensi.
- 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 H and I** 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. 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

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

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

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

ESH Requirements and Coordination

4. Safety and protection of the environment are of the utmost concern on this Contract. Safety in this context refers to the health and safety of people and the protection of the environment. Nothing contained herein relieves the Contractor from complying with all applicable standards and regulations found in 29 CFR Part 1926 (the OSHA construction standard), 40 CFR Parts 261-265 (solid and hazardous waste management), 40 CFR Part 112 (oil pollution control), and ARSD 74:52:01 through 74:52:11 (storm water), as applicable. Site specific safety requirements are defined in the "Contractor Safety Manual," located at: <http://www.sanfordlab.org/ehs/manual/22-construction-ehs-manual-policy> MSHA compliance may be acceptable after review.

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

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

- The SO shall have 30 hr OSHA training or equivalent, with documented experience as a SO under similar conditions. Underground safety experience and training (e.g. MSHA part 48) is highly desirable.
- The SO shall have the authority to stop work.
- The SO will be certified in CPR and First Aid.
- The SO is responsible for administering the Contractor's ESH program.
- In addition to routine daily inspections, the SO will conduct a documented weekly ESH inspection of the work site.
- The SO will escort the Owner's ESH staff on ESH inspections, conducted by the Owner's ESH staff.
- The SO must be trained with respect to 40 CFR Part 112 (oil pollution prevention), 40 CFR Part 261-270 (solid and hazardous waste management), and ARSD 74:52:01 through 74:52:11 (storm water), if applicable.

- The Contractor will supply a weekly ESH report to the Owner, detailing any ESH related items, including OSHA recordable injuries, first aid cases, environmental releases, near misses, and a copy of the weekly EHS inspection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. The Contractor shall regularly inspect, test, and calibrate as necessary all equipment, machinery, tools, or other items furnished by the Owner that are employed in Contractor's Work. Contractor shall take reasonable precautions to avoid damage to facility structures and utilities. If apparent defects are found in Owner-provided materials, Contractor shall promptly notify Owner of such defect(s) in writing. If Contractor fails to make such examination or fails to report an apparent defect in such item or items, Contractor shall not be entitled to any compensation for downtime or delays or schedule extensions associated with repair or replacement of the defective item or items.
19. The Contractor shall manage all waste in performance of the Work in compliance with Owner's Policies and Procedures and state and federal law. Further, the Contractor shall minimize the generation of all wastes and hazardous substances. All disposal and clean-up cost of spills of hazardous substances and non-hazardous debris/waste generated by the Contractor in the performance of the Work will be at the expense of the Contractor.
20. Flammables (defined in 30 CFR Part 52, Subpart A) are not allowed underground. Special consideration may be negotiated with the Owner if Work cannot be completed without flammable materials. This special consideration **must be** **would have been** negotiated during the bidding process. Flammables used on the surface are to be stored in engineered flammable cabinets or in containers with a minimum 1-hour fire resistance.
21. All chemicals to be used at the Owner's facility must be approved by the Owner and Safety Data Sheets (SDS) must be maintained by the Contractor.
22. Tier 4 engines are required on the Owner's site for underground use. Lower Tier equipment may be allowed on site but only with Owner's permission. All diesel equipment must be approved by the Owner prior to usage. An equipment list with associated Tier designations and fuel types **is to be** **was** provided to the Owner in the bid package.
23. Smoking or the use of tobacco products is not allowed within the boundaries of the Owner's facility.
24. Contractor acknowledges that periodic drills and exercises are required by Owner to validate the adequacy and effectiveness of Owner's Emergency Response Plan. Contractor also recognizes that such drills and exercises enhance its employees' understanding of Owner's Emergency Response Plan. Contractor agrees to participate in quarterly drills, which may or may not be scheduled in advance, during the term of this Contract. It is understood that Contractor will not be entitled to any additional compensation for participating in these drills or exercises.
25. Contractor agrees to assess whether Contractor's employees have the physical, mental, and emotional capacity to perform assigned tasks competently, and in a manner that does not unreasonably threaten safety, health, or property, including participation in emergency procedures applicable to Contractor's work location.
26. Owner reserves the right to restrict or deny access of any Contractor employee to the work location.
27. Contractor shall report the hours worked on site by Contractor's employees on a monthly basis to ESH Safety Coordinator Michelle Andresen (mandresen@sanfordlab.org) and to the SDSTA Representative named in the Contract. Hours should be emailed to both Ms. Andresen and the SDSTA Representative no later than the 3rd day of the month for hours worked the previous month.

EXHIBIT C

SCOPE OF WORK

1.0 Background

The SDSTA is a quasi-governmental agency established by the state of South Dakota to operate and manage the SURF at the former Homestake Gold mine in Lead South Dakota. The Homestake mine was closed in 2002. In 2006 the mine was donated to SDSTA for developing and underground science laboratory. Since then, SURF has been rehabilitated and developed to support a variety of underground laboratories and scientific experiments, including physics, biology, geology, and others.

During the last days of the Homestake Mine operation, Barrick Mining Co. turned off the pump systems located throughout the full expanse of the mine in 2002. The SDSTA took control and pumping resumed in 2009. During those seven years, the water levels rose from the sump below the 8000 level up to the 4500 level in the underground. By late 2011, the water level had been pumped down to its current level, and is allowed to fluctuate between the 5650 level down to the 5900 level. The deepest level of the underground is the 8000 level, so there remains a significant “pool” of water in the old underground workings. Estimates of 500 to 600 gmp infiltration water occurs continually along with an additional amount of water originating from rain runoff in the open cut part of the facility. These inflows must be removed to keep the pool water level stable.

At the end of December 2017, the SDSTA is going to own leased equipment related to pumping water from the pool in the underground portion of the laboratory. This is due to an expiration of a lease with the leased equipment reverting to SDSTA ownership. The equipment list can be found in Appendix A. Continued pumping to keep the water at a manageable and safe operating level remains as a high priority for the SDSTA.

2.0 Project Information/Specifications/Requirements:

The following sections provide key information on the main aspects of this project. More detailed information can be found in the specification sections, and will be found in Appendix A. Pictures showing past installations are shown in Appendix B.

2.1 Procurement and Installation of a new pump

This request is to provide a firm fixed-price proposal for the supply and installation of a submersible pump system. This project would require the contractor to immediately purchase two new pumps, motors, and seals, plus one set of electrical cable, pipe, and pressure sensor. One set of this new equipment would need to be installed after January 2018 and prior to September 20, 2018, or immediately if the existing pump experienced a failure. The extra new pump, motor, and seal assembly is to be delivered to the SDSTA directly after the initial pump installation. While waiting to be installed, the Contractor shall maintain both sets of equipment as per manufacturer’s full recommendations. Existing electrical supply, switchgear, transformers, and VFD drive components will be expected to be reused. Please reference Appendix A. The contractor is responsible for all electrical disconnections and reconnections to the electrical supply.

2.2 In the Shaft Derrick System

When the current lease expires, equipment that was originally installed to assist with the pump and column placement reverts to the SDSTA. An “in the shaft derrick” system was built to install and remove the pump and pipe string. The deep well pump and column runs down the #6 Winze. At the top of the “derrick”, is a winch and

hydraulic drive system and that is located on the 4550 level. The well head is located on the 4850 level and is shown in photo #5, and the discharge nozzle is located at the 5000 level. The pump/pipe string is removed from the 4850L while utilizing the remote-controlled winch. A length of pipe is shown in photo #6 being hoisted up to be threaded into the pipe string. Photo #3 shows the top end of the derrick and contains the winch. Photo #4 shows the hydraulic power supply. The photographs are included in Appendix #B.

The Contractor shall assume all risk associated with utilizing the rigging and lifting equipment in the Winze, and will be responsible to perform routine inspections, perform maintenance and repairs to keep the devices in safe operating condition for the duration of the pump and pipe installation. If the Contractor does not have personnel that are trained in inspections of the hydraulics system, the wire ropes, synthetic slings, and lifting attachments, a third party shall be hired by the Contractor. Documentation demonstrating the inspector's training and experience shall be provided.

The new pipe delivered to the SDSTA shall be transferred to special underground transport cars (Zimmerman cars) by the contractor personnel and assisted by SDSTA personnel. These shall be transported down the shaft by the SDSTA crew members and delivered to the 4850L. There, SDSTA shall transport the car to the work site where contractor personnel shall unload the pipe. Photo #2 from Appendix #B shows the Zimmerman car being hoisted into the Yates shaft with a load of 8" pipe aboard.

The contractor shall advise the SDSTA when it nears the end of the job and setting of the well head on its permanent landing is close at hand. An SDSTA crew will then mobilize to the 5000L to align the nozzle to its proper position, the pipe string shall be landed and the SDSTA crew shall couple the existing discharge pipe to the nozzle. Then, final electrical connections can be installed.

2.3 Operating History

Operating history has shown that there exists an anaerobic system in the underground pool of water that encourages the growth of iron eating bacteria. The bacteria have contributed to stress corrosion cracking in steel containing alloys. The bacteria rob the iron from the crystalline structure leaving behind a weak matrix that is prone to cracks that open fresh iron to be decayed by the bacteria. Although fresh water continually flows into the upper sections of the winze, the lab is expecting the bacteria to always be a major factor. A bronze fitted pump that does not contain iron is required, however other non-iron containing alloys can be considered.

2.4 Capacity and Head Requirements

Flows from the deep well pump must match an existing split case dewatering pump maintained by the SDSTA. These can range from 1550 gpm to as low as 1300 gpm, and is fully dependent upon wear within the split case pump. A variable speed drive has worked adequately with the existing pump and motor combination. Typical run times would be 12 hours per day for weekdays and beginning Friday evening, could run continuously until Monday morning, if the SDSTA is trying to reduce the pool water level. To maintain the pool water level, the pump times might run 10 to 12 hours per day 7 days per week.

2.5 Notification of Equipment Failure

If the pump or motor equipment were to fail prior to the installation of the first pump, the Contractor will be notified by the SDSTA that the equipment is failing or has failed and the Contractor will be given no later than 5 weeks after the notification of equipment troubles to mobilize at the SDSTA site.

The SDSTA recognizes that there is a period of time where the pump is waiting for delivery. During that period, the contractor may not be able to meet the notification time period outlined in the preceding paragraph. In this case, the contractor shall meet with the pump supplier to obtain a firm delivery schedule and determine if the equipment can be expedited and at what cost. The SDSTA shall provide guidance if this were to occur.

2.6 Access For Work

All work is located in the underground portion of the Sanford Lab. Transportation down the Yates shaft and to the work site is provided by the Sanford Lab crews. When the Contractor is on site for maintenance or pump

string removal, they will have at least one SDSTA person acting as a guide. A second guide will be supplied when access to the 4550L is necessary.

EXHIBIT D

CONTRACTOR'S RATE SHEET

EXHIBIT E
COMPLIANCE WITH FEDERAL REGULATIONS

EXHIBIT F
DEPARTMENT OF LABOR
WAGE DETERMINATION

EXHIBIT G
PAYMENT PERFORMANCE BOND

EXHIBIT H

**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**

EXHIBIT I
(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 _____