

SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY

CONTRACT FOR CONSULTING SERVICES

by and between

**Company
Address
City, State ZipCode**

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

Referred to as “Consultant”

Referred to as “SDSTA”

**PROJECT: Weld Inspections
SDSTA Contract #2018-28**

THIS CONTRACT, made effective the Xst day of Month, 201X, is made for the described services with the Consultant for the consideration stated herein. The Consultant represents itself as competent and qualified to accomplish the specific requirements of this contract to the satisfaction of the SDSTA. Incorporated into this Contract are the following exhibits:

- Exhibit A: Insurance Requirements
- Exhibit B: Environment Health and Safety Requirements
- Exhibit C: Scope of Work
- Exhibit D: Consultant’s Proposal
- Exhibit E: Acknowledgement of Risk and Release, Agreement not to Sue, and Waiver
- Exhibit F: Release, Agreement not to Sue, and Waiver in favor of the Homestake Indemnified Parties
- Exhibit G: Federal Requirements for Fixed-Price Commercial Services

In consideration of the mutual promises contained herein, the parties agree to the following:

1. Administration: **Name (email)** shall be the SDSTA’s designated representative in all matters pertaining to this Contact. **Name (email)** shall be the Consultant’s designated representative in all matters pertaining to this Contract.
2. Applicable Law/Jurisdiction: This Contract shall be governed and interpreted according to the laws of the State of South Dakota, and the appropriate forum for any litigation or other dispute resolution pertaining to this contract shall be decided in the state courts of South Dakota. The parties consent to the jurisdiction of such court and hereby waive any claims of lack of personal jurisdiction or inconvenience of the chosen forum.
3. Assignment: This Contract, or any part thereof, may not be assigned, transferred, or subcontracted by the Consultant without the prior written consent of the SDSTA. The Consultant shall not engage the services of any subcontractors without the prior written consent of the SDSTA.
4. Contract Sum: For performance of the work specified in the Contract Documents, SDSTA will reimburse Consultant for time and materials as specified in Consultant’s Proposal, attached hereto as Exhibit D. In no event may the total amount paid to Consultant during the term of this Contract exceed **Amount (\$x,xxx)**.

Reimbursement for pre-approved travel expenses, if any, will not exceed Federal Travel Regulations (FTR) standard rates for the applicable travel location.

5. Contract Term: This Contract shall commence on **Month Day, 201X** and shall terminate on **Month Day, 201X**, unless terminated earlier as provided in this Contract.
6. Insurance: During the term of this Agreement, Consultant 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. By executing this Contract, Consultant authorizes the SDSTA to make direct inquiry of Consultant’s insurer or insurance agent concerning the status of the insurance required by this Contract.

7. **Conflict of Interest:** No officer or employee of the SDSTA shall participate in any decision relating to this Contract which affects his or her personal interest in any entity in which he or she directly or indirectly has interest. No employee of the SDSTA shall have any interest, direct or indirect, in this Contract or its proceeds.
8. **Confidentiality:** All reports, plans, specifications, engineering calculations, technical data, miscellaneous drawings, and information contained therein provided to or prepared by Consultant, its owners, officers, employees, agents, consultants, suppliers, and subcontractors in connection with Consultant's performance under this Contract are confidential and the Consultant, 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.
9. **Contract Validity/Severability:** In the event that any court of competent jurisdiction shall hold any provision of this Contract unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.
10. **Debarment or Suspension:** By signing this Contract, the Consultant 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.
11. **Entire Contract:** This Contract sets forth the entire agreement between the parties and replaces and supersedes all prior arrangements on the subject, whether oral or written, expressed or implied. Documents, information and data provided to the SDSTA pursuant to the terms of this Contract 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 Contract to the contrary notwithstanding, any such documents, information or data may become public records open to public inspection.
12. **Force Majeure:** Neither party shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such clauses may include, but are not limited to, acts of God or of a public enemy, fires, floods, epidemics, strikes, embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.
13. **Headings:** The headings in this document are for convenience of reference only and do not define, describe, extend, or limit the scope or intent of this Contract, or the scope or intent of any provision contained in this Contract, and thus shall not be used in interpretations of this Contract. Except where the context requires otherwise, whenever used the singular includes the plural, the plural includes the singular, the use of any gender is applicable to all genders and the word "or" has the inclusive meaning represented by the phrase "and/or." Whenever this Contract refers to a number of days, unless otherwise specified such number refers to calendar days. The wording of this Contract shall be deemed to be the wording mutually chosen by the parties and no rule of strict construction shall be applied against any party.
14. **Indemnification:** Consultant 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 Consultant, but only to the extent of such negligence, misconduct, error or omission. This section does not require the Consultant 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.
15. **Independent Consultant:** Consultant warrants that it is regularly engaged in business of which the services provided in this Contract are typical. The parties understand that the SDSTA will file annual information returns as required by the Internal Revenue Service with copies sent to Consultant. Consultant will be responsible for compliance

with all applicable laws, rules, and regulations involving but not limited to, employment, labor, worker's compensation, hours of work, working conditions, payment of wages, and payment of taxes, such as unemployment, social security, and other payroll taxes, including other applicable contributions as required by law.

16. Licensing: Consultant shall secure in its name and at its expense all federal, state, and local licenses and permits required for completion of work under this Contract. Consultant shall provide proof of such licensure or permit to the SDSTA upon request.

17. Modification: This Contract may be modified or amended only in writing signed by both parties. 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.

18. Non-Discrimination: Consultant shall not discriminate and shall comply with applicable laws and SDSTA policies prohibiting discrimination on the basis of race, color, religion, national origin or citizenship status, age, disability, or veteran status. The SDSTA encourages the employment of individuals with disabilities.

19. Notice: All notices, demands and other communications required by the this Contract 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 Consultant:**

Company Name
Attn: Name
Street
City State ZipCode
Email

• **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.

20. Ownership of Documents: 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 Consultant for the Consultant'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 Consultant may not retain any such document for its own use, nor disseminate these materials to any person or entity nor may the Consultant 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 to subcontractors and suppliers. All documents covered by this article shall be delivered to the SDSTA Representative at the completion of the work.

No. Project Deliverables: Consultant will provide all working documents relevant to the contract scope upon contract termination or completion including drawings, specifications, software files, and other instruments of service. Reuse of any documents pertaining to this project by the SDSTA on extensions of this project or on any other project shall be at the SDSTA's risk. The SDSTA agrees to defend, indemnify, and hold harmless Consultant from all claims, damages, and expenses including attorney's fees arising out of such reuse of the documents by the SDSTA or by other acting through the SDSTA.

21. Payments to Consultant: SDSTA shall make payments on a monthly basis for work accomplished in accordance with this Contract. Payment will be made upon receipt of Invoice or Payment Request Form. Invoices or Payment

Request Forms are to be addressed to 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. Final Invoices or Payment Request Forms must be received within thirty days of completion of this Contract. No payments will be made for invoices received later than thirty days past the ending date of this Contract.

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.

22. **Safety:** Consultant's responsibility for project safety is attached hereto as Exhibit B, and incorporated herein by reference.

23. **Publicity, Publication:** Unless otherwise provided by law or the SDSTA, title and possession of all data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for with SDSTA funds shall vest with the SDSTA. Consultant shall at all times obtain the written approval of the SDSTA before Consultant makes any statement bearing on the work performed or data collected under this Contract to the press, or issues any material for publication through any medium of communication. If Consultant publishes a work dealing with any aspect of performance under this Contract, or of the results and accomplishments attained in such performance, the SDSTA shall have a royalty free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and authorize others to use the publication.

24. **Record Keeping, Audit, and Inspection of Records:** Consultant shall maintain books, records, and other compilations of data pertaining to the requirements of this Contract to the extent and in such detail as shall properly constitute claims for payment. All such records shall be kept for a period of seven years or for longer period if specified herein. All retention periods start on the first day after the final payment of the Contract. If any litigation, claim, negotiation, audit, or other such action involving the records is commenced prior to the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the applicable retention period, whichever is later. The SDSTA or the grantor agency (if any), or any of their authorized representatives shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of Consultant's data pertaining to this Contract. Such access shall include on-site audits.

25. **Scope of Work:** The Consultant agrees to perform the Scope of Work as described in Exhibit C, hereby incorporated by reference.

26. **Compliance with Federal Regulations:** Consultant agrees that the federal regulations outlined in Exhibit E are hereby incorporated by reference as part of the terms and conditions of this Agreement.

Consultant agrees to use the E-Verify System (www.uscis.gov/i-9-central/about-form-1-9/e-verify-and-form-i-9) to verify the employment eligibility of all employees assigned to this Contract and all new hires working in the United States. Consultant further agrees to maintain an active registration, during the term of this Contract, with the System for Award Management (SAM) (www.sam.gov).

27. **Termination:**

A. This Contract depends upon the continued availability of appropriated funds. This Contract will be terminated by the SDSTA if the appropriated funds or grant expenditure authority is discontinued. Termination for this reason is not a default by the SDSTA nor does it give rise to a claim against the SDSTA. Termination for this cause shall be treated in the manner set forth in paragraph B of this article.

B. The SDSTA may terminate this Contract at any time without cause, in whole or in part, upon giving Consultant notice of such termination. Upon such termination, Consultant 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. Consultant shall receive as full compensation for termination and assignment all amounts then otherwise due under the terms of this Contract, and amounts due for work performed subsequent to the latest request for payment through the date of termination.

C. If Consultant is in default under the provisions of this Contract, the SDSTA may, without prejudice to any other right or remedy and upon written notice to the Consultant, terminate the Contract.

28. Professional Judgment: Consultant intends to serve as the SDSTA's professional representative for those services as defined in this agreement and to provide advice and consultation to the SDSTA as a professional exercising the same degree of care and skill as would be exercised by others in the same profession in South Dakota. Any opinions of probable project cost, approvals, and other decisions made by Consultant for the SDSTA are rendered on the basis of experience and qualifications and represent Consultant's professional judgment.

29. This agreement shall not be construed as giving Consultant the responsibility or authority to direct or supervise construction means, methods, techniques, sequences, or procedures of construction selected by any contractors or subcontractors or the safety precautions and programs incidental to the work of any contractors or subcontractors.

28. Underground Work:

A. Notification of Hazards: Consultant 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 Consultant, Consultant'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 as Exhibits E and F, and incorporated herein by this reference.

C. Indemnification of Homestake Indemnified Parties: Consultant, 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 sub-suppliers. 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.

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

EXHIBIT A
INSURANCE REQUIREMENTS

A. Types of Coverage

The Subcontractor shall at its expense obtain, keep in force, and maintain insurance to cover its performance under this Subcontract of the types and in the amounts set forth below. Such insurance shall be maintained in full force and effect during the performance of work required by this Subcontract.

<u>Commercial General Liability Insurance</u>	<u>Minimum Limit</u>
• Per Occurrence	\$2,000,000
• Products/Completed Operations Aggregate	\$2,000,000
• Personal and Advertising Injury	\$1,000,000
• General Aggregate	\$5,000,000

<u>Business Automobile Liability Insurance</u>	<u>Minimum Limit</u>
• Per Occurrence	\$1,000,000

Workers' Compensation as required under South Dakota or other applicable State Law

Employer's Liability Insurance with a minimum limit of \$500,000 per accident and employee.

B. Coverage Requirements

The commercial general liability and business automobile liability insurance policies shall provide by appropriate language that additional insureds Barrick Gold Corporation, Homestake Mining Company of California, and the Affiliates of Barrick and Homestake and each of its and their representatives, and the South Dakota Science and Technology Authority, its officers, agents, employees and representatives, and The Regents of the University of California, its officers, agents, employees and representatives, Fermi Research Alliance, LLC, the University of Chicago, Universities Research Association, Inc., and the United States Government are additional insureds with respect to performance of this Subcontract by the Subcontractor and its lower-tier subcontractors and consultants.

The insurance afforded by such policies shall be primary insurance and non-contributory with any insurance or program of self-insurance maintained of the additional insureds.

All rights of the insurer for contribution from other insurers of Barrick Gold Corporation, Homestake Mining Company of California, and the Affiliates of Barrick and Homestake and each of its and their representatives, and the South Dakota Science and Technology Authority, its officers, agents, employees and representatives, and The Regents of the University of California, its officers, agents, employees and representatives, Fermi Research Alliance, LLC, the University of Chicago, Universities Research Association, Inc., and the United States Government are waived.

The required insurance shall be obtained from insurance companies authorized to do business in South Dakota and satisfactory to South Dakota Science and Technology Authority (SDSTA). Fermilab reserves the right to approve the form and substance of all policies issued in satisfaction of this requirement.

The insurance shall not be written on a claim made form or be subject to a self-insured retention without the written approval of the SDSTA Procurement Representative. If insurance on a claim made form is approved, it shall continue for three years following termination of this Subcontract

and provide for a retroactive date of placement prior to or coinciding with the effective date of this Subcontract.

The stipulation of required insurance coverage and limits shall not in any way limit the liability of the Subcontractor under this Subcontract.

Proof of Insurance

The Subcontractor agrees to deliver to SDSTA at the signing and delivery of the within Subcontract, and in any event before any work is performed hereunder, certificates of the insurance companies as to the particulars of the insurance coverage above referred to, and such certificates shall contain a provision that such insurance will not be cancelled nor any material change made in the policies except upon not less than thirty (30) days prior notice thereof to SDSTA, mailed to it by registered mail, with postage prepaid, addressed to:

SDSTA/Sanford Underground Research Facility
630 E. Summit St.
Lead, South Dakota 57754
Procurement Department

C. Lower-Tier Subcontractor Insurance

Before permitting any sub-subcontractor to perform any work under this Subcontract, the Subcontractor shall require that such sub-subcontractor furnish satisfactory evidence that it is in compliance with the Risk Transfer Protocols and other requirements of this Article.

D. Indemnification

The Subcontractor shall hold harmless and indemnify SDSTA for any expense incurred or loss suffered by SDSTA for the failure of the Subcontractor to comply with the provisions of this Article. The Subcontractor shall accept at its own cost the defense of any of the additional insureds described above upon tender of any legal action or claim naming any of the additional insureds.

EXHIBIT B
ENVIRONMENT, HEALTH AND SAFETY REQUIREMENTS

1. The requirements contained herein are specifically related to the Environment, Safety and Health (ESH) associated with the performance of the consulting work for this contract and focused on protecting the Contractor and Subcontractor employees and the environment in which they work. These requirements are not intended to infer any responsibility for the work performed to construct or utilize the work product of this contract, nor to replace codes and standards used in the design process.

2. 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 ESH precautions and programs related to the performance of the Project.

3. 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) 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. Contractor will also immediately notify Owner of any failure to comply with state and federal environmental laws, rules, and regulations.

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

ESH Requirements and Coordination

5. 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 Policy," located at <https://www.sanfordlab.org/esh>. MHSA compliance may be acceptable after review.

6. The Contractor will address the safety requirements defined. Contractor costs associated with the implementation of the requirements will be borne by the Contractor.

7. If Contractor performs any work onsite at the Sanford Underground Research Facility (SURF), the Contractor shall be accompanied at all times by an Owner's representative.

8. If Contractor performs any work onsite at the SURF, 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):

- a) Define the scope of the work.
- b) Analyze hazards in a step by step fashion.
- c) Develop and implement hazard controls and regulatory compliance.
- d) Perform the work and monitor the effectiveness of the hazard controls.
- e) 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.

9. If Contractor performs any work onsite at the SURF, 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.

10. 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. Owner shall provide non-standard PPE for the Contractor's use if required. Non-standard PPE may include items such as fall protection, lights and self rescuers for underground work, etc.

11. 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.

12. 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:

(a) Documented compliance with OSHA 1910 and 1926 along with training requirements as applicable is required. Note that current MSHA training certification is also acceptable.

(b) For all Contractors on site beyond the common office areas:

i. Site Specific ESH Orientation and Training (plan for a 1 to 2-hour on-site training course conducted by Owner's representatives).

ii. Any other training requirements identified by the Contractor or by the Owner and communicated to the Contractor, during the bid process and Site Specific ESH Program review.

13. 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.

14. In the event of an incident occurring at the Owner's facility, 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.

15. 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.

16. Smoking, use of tobacco products, alcohol, controlled substance or weapons are not allowed within the boundaries of the Owner's facility. All property owned and operated by the SDSTA is designated as tobacco-free. This applies to all areas of the surface and the underground. The Contractor shall manage and maintain a drug and alcohol policy that aligns with that of the Owner's written policy and procedures. ESH department review of this document may be required.

17. 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.

18. 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.

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

20. 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

All field welds within the Ross shaft are required to be performed by certified welders. However, during the rehabilitation project, some of these welds were performed by non-certified welders. All the field welds must either pass inspection or be corrected by certified welders to meet the original specification.

The scope for this project will be the complete visual inspection, by a certified welding inspector to AWS D1.1, of all welded structural washers and accessory welds that took place during the Ross shaft rehabilitation. A substantial amount of this inspection will focus on the 60-70 welded structural washers found at each of the 33 bearing beams in the Ross shaft. The inspection process will be a phased approach consisting of:

1. Top down visual inspection of all field welds in the Ross shaft (Phase 1):
 - a. Welded structural washers on saddles 1-6 at bearing beams 1-24
 - b. Welded structural washers on saddles 1-7 at bearing beams 25-33
 - c. Field welds at the 2450 level station
 - d. Field welds associated with the 4850 brow sets
 - e. Field welds associated with the 4850 loading pocket
 - f. Inspection report documenting the inspection

2. Weld inspection to the shaft designers specification (Phase 2):
 - a. Reinspect the corrected failed welds from Phase 1. The combination of the Phase I inspection and this Phase 2 inspection will meet the shaft designer specification requirements for 10% visual inspection of the 60-70 welded structural washers at the 33 bearing beams.
 - b. Non-destructive testing using dye penetrant on saddle #6 at sets 35, 53, 85, 128, 149, 185, 201.
 - c. A final inspection report that documents the shaft inspection along with the inspection methods used.

Upon completion of Phase 1 inspection the deficient welds will be corrected based on the shaft designer's direction before proceeding to Phase 2. Phase 2 inspections should be broken out as a separate bid option that can be awarded as a follow-on to the Phase 1 Base Bid. SDSTA reserves the right to accept or reject any or all Bids. Acceptance of a Bid does not imply acceptance of any proposed options or alternatives. If a Bid has contingencies on other aspects of this project these contingencies must be clearly stated on the bid. Bids must include all costs associated with the Phase 1 and Phase 2 inspection including travel, time, & supplies/equipment needed.

**EXHIBIT D
CONSULTANT'S PROPOSAL**

EXHIBIT E
RISK RELEASE AND WAIVER



Name: _____

Affiliation: _____

Date: _____

**South Dakota Science and Technology Authority
Sanford Underground Research Facility (SURF)**

ACKNOWLEDGEMENT OF RISK

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



**South Dakota Science and Technology Authority
Sanford Underground Research Facility (SURF)**

ACKNOWLEDGEMENT OF RISK

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."

(Initial) ____ 10. I acknowledge that I have provided valid personal identification to Authority Personnel.



**South Dakota Science and Technology Authority
Sanford Underground Research Facility (SURF)**

ACKNOWLEDGEMENT OF RISK

I HAVE READ THIS ACKNOWLEDGEMENT OF RISK, CONSISTING OF THREE PAGES AND TEN 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 _____, 2016.

[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: _____ Logged by: _____
[Print Name]

Witnessed by: _____ Date Logged: _____
[Signature]

EXHIBIT F
RELEASE, AGREEMENT NOT TO SUE, AND WAIVER



Name: _____

**South Dakota Science and Technology Authority
Sanford Underground Research Facility (SURF)**

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



**South Dakota Science and Technology Authority
Sanford Underground Research Facility (SURF)**

RELEASE, AGREEMENT NOT TO SUE AND WAIVER

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).

(Initial) ____ 7. I acknowledge that I have provided valid personal identification to Authority Personnel.



South Dakota Science and Technology Authority
Sanford Underground Research Facility (SURF)

RELEASE, AGREEMENT NOT TO SUE AND WAIVER

I HAVE READ THIS RELEASE, AGREEMENT NOT TO SUE AND WAIVER, CONSISTING OF THREE PAGES AND SEVEN 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 _____, 2016.

[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: _____ Logged by: _____
[Print Name]

Witnessed by: _____ Date Logged: _____
[Signature]

**EXHIBIT G
FEDERAL REQUIREMENTS**

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