SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY
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: **SANDBLASTING, PRIMING & PAINTING YATES CONVEYANCES**
Contract #2020-20

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

I. THE SCOPE OF WORK OF THE CONTRACTOR

A. The Contractor shall provide and furnish all of the supervision, plant, labor, materials, necessary tools, expendable equipment, and all utility and transportation services required to perform and complete in a workmanlike manner and ready for operation all the Work required type in brief description of work to be performed under the contract, more fully described in the attached Scope of Work, as per request from the SDSTA in strict compliance with the Contractor's Proposal and any other Contract Documents herein mentioned which are a part of this Contract. Each request and the Contractor's Proposal in response thereto shall be referred to hereinafter as the "Work." Contractor Representative (email) shall be the Contractor's designated representative in all matters pertaining to this Contract.

B. CONTRACT DOCUMENTS: The following documents and any other documents incorporated in them by reference constitute the Contract Documents:

1. This Contract, including:
   - Insurance Requirements attached as Exhibit A.
   - Environment Health and Safety Requirements attached as Exhibit B.
   - Scope of Work attached as Exhibit C.
   - Contractor's Proposal attached as Exhibit D.
   - Compliance with Federal Acts attached as Exhibit E.
2. Addenda issued prior to execution of this Agreement.

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

C. TIME FOR COMPLETION: The work under this Contract shall be commenced within ten (10) consecutive calendar days after date of issuance of notice to proceed by the SDSTA and shall be completed as described in the SDSTA's written request, excluding punch list items. As to each Contractor proposal, this completion date shall be referred to herein as the "Contract Time."

D. This Contract shall terminate as of Date**,** unless otherwise terminated according to the early termination provisions of this Contract.

II. SDSTA REPRESENTATIVE

The SDSTA shall from time-to-time designate in writing an SDSTA Representative. The SDSTA Representative shall be responsible for providing SDSTA-supplied information and approvals in a timely manner to permit Contractor to fulfill its obligations pursuant to this Agreement. The SDSTA Representative shall also provide Contractor with prompt notice if it observes any failure on the part of the Contractor to fulfill its contractual obligations, including any

errors, omissions or defects in the performance of the work provided for in this Agreement. Unless changed in writing by the SDSTA, the SDSTA Representative is Name **(Email).**

III. THE RESPONSIBILITIES OF THE SDSTA

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

B. Unit Prices, if any, are as follows: ***Unit prices are set forth in Exhibit D***.

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

IV. CHANGE ORDERS

A. A Change Order is a written order to the Contractor signed by the SDSTA, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates Contractor's agreement therewith, including the adjustment in the Contract Sum or the Contract Time.

B. The SDSTA, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order, and shall be performed under the applicable conditions of the Contract Documents.

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

1. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation and acceptance to the SDSTA Representative for such purposes. Such lump sum proposals shall be supported by a completely detailed analysis of the proposed change subdivided into the Work of the Contractor and/or the Work of each subcontractor(s) involved in the proposed change, as applicable.
2. By unit prices stated in this Contract or subsequently agreed upon.

D. If none of the methods set forth in this Article IV, paragraphs C1 and C2 is agreed upon, the Contractor, provided Contractor receives a written order signed by the SDSTA, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the SDSTA on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for Contractor's fee. In such case, Contractor shall keep and present, in such form as the SDSTA may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order.

V. DIFFERING SITE CONDITIONS

A. Contractor shall promptly, and before the conditions are disturbed, give written notice to the SDSTA and Project Engineer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

B. The SDSTA shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of changed conditions, the Contract Sum shall be adjusted as provided in Article III, provided that the Work has been ordered in writing by the SDSTA.

VI. DELAYS AND EXTENSIONS OF TIME

A. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the SDSTA, or by any separate contractor employed by the SDSTA, or by changes ordered in the Work, or by labor disputes not caused by the labor practices of the Contractor, or by fire, unusual delay in transportation, severe and unusual weather conditions not reasonably anticipated, unavoidable casualties, or any other causes beyond Contractor's control and not occurring due to the fault or neglect of the Contractor, any subcontractor or any other person for whose acts the Contractor is responsible, then the Contract Time shall be extended by Change Order for such reasonable time as the SDSTA shall determine.

B. Any claim for extension of time shall be made in writing to the SDSTA not more than ten (10) days after the commencement of the delay; otherwise it shall be deemed waived. In the case of continuing delay, only one claim is necessary.

C. Time extensions will not be granted for rain, wind, snow, or other natural phenomena of normal intensity for the locality where the Work is to be performed.

D. Contractor's right to make a claim or claims for an extension of time shall not preclude Contractor's right to make a claim for delay damages arising out of the SDSTA's significant interference, by action or inaction, with the Contractor's Work.

VII. CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY

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

VIII. WORK PLAN POLICY

A. Contractor shall maintain a site work plan at all times. Safety and health shall be the top priority with all work plans.

B. Contractor's work plan shall be reviewed with the SDSTA's Project Team prior to starting the Work. The Project Team shall include the Safety Liaison, Project Manager, and SDSTA's Representative. Any changes to the work plan shall be reviewed with the Project Team prior to making said change.

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 nonconveniens.

D. Contractor shall carry on the Work and maintain its progress during any dispute or litigation proceedings, and the SDSTA shall continue to make payments to the Contractor to the extent required by the Contract Documents and South Dakota law.

XVIII. NOTICE:

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

- **If to Contractor:**

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

- **If to SDSTA:**

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

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

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

XIX. MISCELLANEOUS

A. Documents, information and data provided to the SDSTA pursuant to the terms of this Agreement may be subject to examination and review by representatives of the Homestake Mining Company of California pursuant to the terms of the Property Donation Agreement or by representatives of federal, state or local governmental entities, including, but not limited to, the South Dakota Department of Legislative Audit. Anything elsewhere in this Agreement to the contrary notwithstanding, any such documents, information or data may become public records open to public inspection.

B. The terms of this Agreement shall be construed and governed under the laws of the State of South Dakota. Any lawsuit arising out of or pertaining to the Agreement shall be commenced in the state courts of South Dakota. The Contractor shall not engage the services of any subcontractors without the prior express, written

consent of the SDSTA. Time is of the essence in the performance of the covenants, terms and conditions of the Agreement. This Agreement constitutes the entire agreement of the parties concerning its subject matter, and supersedes any prior discussions, representations or agreements, wither oral or written. The terms of this Agreement may only be amended by a written document, executed with the same formalities as this Agreement.

C. Any agreement entered into by the Contactor with any designer, consultant, subconsultant, contractor, subcontractor or other person to perform work in connection with this Agreement shall include the provisions and requirements of Articles III, VII, VIII, IX, XI, XII, XIII, XIX, XX, XXI, XXII and XXIII of this Agreement; provided, however, that the amount of general liability insurance required of the designer, consultant, subconsultant, contractor, subcontractor or other person shall be specified by the SDSTA in writing.

D. Debarment or Suspension: By signing this Contract, the Contractor certifies to the best of its knowledge and belief that it and all persons associated with the Contract, including persons or corporations who have critical influence on or control over the Contract, are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

E. Service Contract Act Requirements: In accordance with the clause of the General Provisions entitled Service Contract Act of 1965, As Amended (FAR 52.222-41), the Contractor shall pay its service employees, as defined, and ensure that service employees of lower-tier subcontractors are paid, not less than the minimum monetary wages, and shall furnish to them the fringe benefits, specified in the U.S. Department of Labor Wage Determination of this Contract, attached hereto as Exhibit H and incorporated by reference.

F. Contractor agrees to use the E-Verify System (www.uscis.gov) to verify the employment eligibility of all employees assigned to this Contract and all new hires working in the United States, and to provide E-Verify documentation to the SDSTA within ten (10) days of execution of this Contract. If Contractor is a sole proprietorship with no employees, E-Verify is not required. Contractor further agrees to maintain an active registration, during the term of the Contract, with the System for Award Management (www.sam.gov).

XX. REPORTING

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

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

XXI. CONFLICTS OF INTEREST

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

XXII. INDEMNIFICAITON 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	Mike Headley Date
Title	Executive Director

EXHIBIT A

SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY
INSURANCE REQUIREMENTS

A. Minimum Insurance

Prior to the commencement of work, the Contractor will procure and maintain the following insurance:

1. Commercial general liability insurance with limits not less than $1 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, and the South Dakota Science and Technology Authority, its officers, agents, employees and representatives, Business automobile liability insurance with limits not less than $1 million per occurrence. Such insurance shall include coverage for owned, non-owned and hired automobiles.
3. Errors & omissions liability coverage with limits not less than $1 million per claim (where applicable).
4. Workers compensation insurance as required by South Dakota law.

B. Special Provisions Applicable to All Coverages

1. The Contractor or Project Sponsor must provide the South Dakota Science and Technology Authority 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.
2. Self-insured retentions and/or deductibles greater than $50,000.00 must be declared and approved by the Authority.

C. 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. The Contractor or Project Sponsor must agree to provide complete, certified copies of all required insurance policies if requested by the Authority.

D. Acceptability of Insurers

Insurance shall be placed with insurers acceptable to the South Dakota Science and Technology Authority.

E. Subcontractors

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

EXHIBIT B

ENVIRONMENT HEALTH AND SAFETY REQUIREMENTS
CONTRACTOR'S RESPONSIBILITY FOR PROJECT SAFETY

1. Contractor recognizes the importance of performing the work in a safe and responsible manner so as to prevent damage, injury, or loss to individuals, the environment, and the 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 and 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 (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 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 Policy," located at: http://sanfordlab.org/ehs/manual/22-construction-ehs-manual-policy. MHSA compliance may be acceptable after review.

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

6. The Contractor shall 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. In the case of shift work, the Contractor will designate one SO as the lead for the project. The training requirements for the second 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 a monthly ESH inspection, 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 ESH 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.

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 and Controls process that is aligned with the Owner (See SURF website ESH Manual at http://sanfordlab.org/node/3402). The Work Planning and Controls process

must be conducted and documented prior to the start of work. The Work Planning and Controls 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 and fall arrest with suspension trauma safety straps) 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* at a minimum includes:

- 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 are required

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 associated regulations. 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. (Note that current MSHA training certification may also be acceptable.)
- Site Specific and the Sanford Underground Research Facility (SURF) Surface and/or Underground Orientation Training, provided by SURF
- 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, unacceptable risk 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 notify Owner immediately and never later than the end of shift. Contractor shall conduct an incident investigation in accordance with the Owner's policies. The investigation will include preparing a written report summarizing the results of the investigation, corrective actions taken to prevent a reoccurrence, and any lessons learned. The Owner may at its discretion participate in and facilitate the incident investigation. Time and expense incurred by Contractor performing an incident investigation will be at the Contractor's expense.

18. The Contractor may with the Owners written permission operate SURF owned equipment, the Incidental Operator must first meet SDSTA requirements for operation of said equipment. 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 or equipment, defective equipment shall be taken out of service and Contractor shall promptly notify Owner of such defect(s) in writing. Contractor provided equipment shall be inspected and maintained prior to arriving on-site and before each use. Failure of Contractor provided equipment shall not be entitled to any compensation for downtime or delays or schedule extensions.

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 §57.4460 Storage of flammable liquids underground.) are not allowed underground. Flammables used on the surface are to be stored in engineered flammable cabinets or in containers with a minimum 1-hour fire resistance.

- Combustibles in the underground work areas shall be managed as per 30 CFR Part 57.4104 - 57.4531; as applicable.

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 and be readily available to workers on site.

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 underground 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, 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.

24. Contractor acknowledges that periodic evacuation 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 evacuation 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 evacuation 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

EXHIBIT D

CONTRACTOR'S RATE SHEET

EXHIBIT E
COMPLIANCE WITH FEDERAL REGULATIONS

The Equal Opportunity Act 2000 (EOA) prohibits any person concerned with the provision of goods, facilities, and services to the public or a section of the public from discriminating against a person who seeks to obtain those goods, facilities and services. Discrimination on the basis of race, color, national origin, sex, disability, or age is
prohibited by federal civil rights laws.

FA-TC-0015 FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

Subcontractor will comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

FA-TC-0015.1-SURF FEDERAL EXPORT CONTROL LAWS

The recipient will comply with all Federal Export Control laws, rules, and regulations which generally regulate the export of sensitive technologies, equipment, software, and related data and services such as: the Export Administration Act and Export Administration Regulations ("EAR"); the Atomic Energy Act of 1954; the Arms Export Control Act and the International Traffic in Arms Regulations ("ITAR"); and the Trading with the Enemy Act and the Foreign Asset Control Regulations.

FA-TC-0020 NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

FA-TC-0023 ENVIRONMENTAL, SAFETY AND HEALTH (ES&H) PERFORMANCE OF WORK AT DOE FACILITIES

With respect to the performance of any portion of the work under this award which is performed at a DOE-owned or controlled site, the recipient agrees to comply with all State and Federal ES&H regulations and with all other ES&H requirements of the operator of such site.

Prior to the performance on any work at a DOE-Owned or controlled site, the recipient shall contact the site facility manager for information on DOE and site specific ES&H requirements.

The recipient shall apply this term to its sub-recipients and contractors.

FA-TC-0031-CH (Modified) NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE/NNSA providing either a NEPA clearance or a final NEPA decision regarding this project.

FA-TC-0058 INDEMNITY

The Recipient shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

FA-TC-0065 LOBBYING RESTRICTIONS (MARCH 2012)

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere

in statute and regulation.

FEDERAL TERMS AND CONDITIONS, CONT.

1. **Equal Employment Opportunity** – Compliance is required with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. **Copeland "Anti-Kickback" Act** (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients require compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported
violations to the Federal awarding agency.

3. **Davis-Bacon Act**, as amended (40 U.S.C. 276a to a-7) - All construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. **Contract Work Hours and Safety Standards Act** (40 U.S.C. 327-333) - Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. **Rights to Inventions Made Under a Contract or Agreement** - Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6**. Clean Air Act** (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and subgrants of amounts in excess of $100,000 require the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. **Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352) - Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. **Debarment and Suspension** (E.O.s 12549 and 12689) - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.