UNIVERSITY OF CALIFORNIA
LOS ALAMOS NATIONAL LABORATORY

SPECIAL PROVISIONS NO.
DATE
Table of Contents

SP-1, Definitions 3
SP-2, Scope of Work 3
SP-3, Commencement, Prosecution, and Completion of Work 3
SP-4, Safety and Health Requirements 4
SP-5, Contractor's Superintendent 14
SP-6, Removal of Employee 14
SP-7, Termination for Cause 14
SP-8, Contractor Performance Evaluation 15
SP-9, Conflict Provisions 15
SP-10, Contract Documents 16
SP-11, State Lien Statutes 16
SP-12, Liquidated Damages 16
SP-12, Damages For Delay 17
SP-13, Temporary Field Office 17
SP-14, Security Procedures 18
SP-15, Unclassified Controlled Nuclear Information (UCNI) 26
SP-16, Vehicular Access and Closing of Streets 29
SP-17, University Representatives - Correspondence 29
SP-18, Modification Proposals - Price Breakdown 31
SP-19, University Field Personnel and Inspection 32
SP-20, Construction Contract Special Tax Provision 32
SP-21, Use of Explosives 33
SP-22, Work Forces - Work Periods 33
SP-23A, Schedules, Breakdowns, Contracts, Payments 34
SP-23B, Contract Schedules 36
SP-23C, Contract Schedules 40
SP-24, Payment Due Dates, Inspection Period, and Invoices 56
SP-25, Stockpile and Work Areas 56
SP-26, Utilities 58
SP-27, Salvage, Recycling or Disposal of Waste Materials 59
SP-28, Testing 59
SP-29, Insurance Requirements 61
SP-30, Charges for Training, Equipment, and Materials Supplied by the University 62
SP-31, Liability for Fines and Penalties 62
SP-32, Access to Work Site 62

SP-33, Alterations in Contract.....63
SP-34, Subcontractor Listing 67
SP-35, Storm Water Pollution Prevention Plan 70
SP-36, Radiological Control.....71
SP-37, Special Radiological Conditions 72
SP-38, Nuclear Hazards Indemnity Agreement 77
SP-39, Environment, Safety, and Health Compliance and Stop Work 81
SP-40, Economic Development in Northern New Mexico 82
SP-41, Security 82
SP-42, Classification.....84
SP-43, Foreign Ownership, Control, or Influence Over Contractor 84

Note: Please note that the terms, "University," "Los Alamos National Laboratory," "LANL," and "Laboratory" are used herein interchangeably.

SP-1, Definitions

As used in these Special Provisions (SPs), the following terms have the meanings stated:

Contract — A legally binding agreement issued under the Prime Contract and between the University and a third party that contains the essential terms and conditions under which goods or services will be furnished to the Laboratory.

Contractor — The party entering into the contract with the Regents of the University of California.

Contract Administrator — The representative of the University of California authorized to address contractual issues, and execute and/or administer contracts on behalf of Los Alamos National Laboratory.

Laboratory — Los Alamos National Laboratory.

LANL — Los Alamos National Laboratory.

Subcontractor — An individual or legal entity that has entered into an agreement with a Contractor for the delivery of goods or services necessary for the Contractor's performance of the contract.

University — The Regents of the University of California, a constitutional corporation and instrumentality of the State of California, which operates Los Alamos National Laboratory under Prime Contract W-7405-Eng-36.

SP-2, Scope of Work

The Contractor shall provide all labor, materials, and equipment to construct *[Give a meaningful description of the work that does not purport to be a laundry list. On small projects with no Drawings or Specifications, this is the ONLY description of the work. Make sure you sit down with the requester and describe ESSENTIALLY what is required.]*
And to perform certain related work, in accordance with these Contract documents.

SP-3, Bonds, Insurance and Commencement, Prosecution, and Completion of Work

The Contractor shall:

A. if the contract price is $100,000 or more, submit required performance bond and payment bond or alternative payment protection within 10 days after the award date of this contract,

B. submit the insurance certificate required under General Provision Article 29 and containing the coverage specified in the Special Provision entitled “Insurance Requirements” prior to commencing work,

C. commence work under this Contract within [ ] ( ) calendar days after the date the Contractor receives the Notice to Proceed,

D. prosecute the work diligently, and

E. complete the entire work ready for use not later than [ ] ( ) calendar days after receipt of the Notice to Proceed.

The time stated for completion shall include final cleanup of the premises and completion of all final inspection punch list work. The Notice to Proceed will be deemed received five (5) calendar days after the mailing date of the Notice, unless the Notice is actually received by the Contractor at an earlier date.

SP-4, Safety and Health Requirements

A. Definition. For the purposes of this Contract, the University's safety and health requirements are:

1. The U.S. Department of Labor's Occupational Safety and Health Standards, 29 CFR 1910, and Safety and Health Regulations for Construction, 29 CFR 1926; and

2. Such other safety and health requirements as are specified in this Contract.

B. Contractor's Responsibility for Safety and Health

1. The Contractor shall be responsible for the safety and health performance of its lower-tier subcontractors, and for ensuring that all workers at the construction site comply with the Contractor’s Safety Program.

2. The Contractor shall be responsible for all claims, demands, causes of action, and suits, of whatever nature, and for all fines, penalties, and monetary damages assessed by any regulatory authority, resulting from noncompliance at the construction site with the University's safety and health requirements or the Contractor’s Safety Program, and the Contractor shall indemnify and hold harmless the University from all such claims, demands, causes of action, suits, fines, penalties, and monetary damages to the extent

caused in whole or in part by acts and omissions of the Contractor or any of his subcontractors, unless arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the University or its agents or employees, or out of the giving of or failure to give directions or instructions by the University or its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

C. Stop Activity. The Contractor shall ensure that all workers at the construction site are informed that they should stop work activity if:

1. An imminent danger exists;

2. A change in work conditions may impact worker health and safety or the environment;

3. An existing environment, safety or health hazard cannot be controlled; or

4. A new environment, safety or health hazard is identified.

D. Contractor's Safety Program. The Contractor shall establish and maintain a Safety Program, approved by the University, to protect all persons on the construction site. The Safety Program shall also protect against damage to property, supplies and equipment, and shall prevent unnecessary work interruptions. The Contractor shall submit the documentation of its Safety Program for review by the University no later than ten days after the notification of award. The University shall approve the Contractor's Safety Program upon a finding that it assures compliance with the University's safety and health requirements. A Notice to Proceed shall not be issued until the University has approved the Contractor's Safety Program. The Safety Program documentation, which shall be submitted for University approval and thereafter kept available at the construction site for reference by workers, includes the following:

1. Activity Hazard Analysis (AHA). The Contractor shall provide an Activity Hazard Analysis that evaluates the work associated with each project phase by identifying specific hazards that may expose work-site employees or other work sites to danger, and identifying appropriate control measures. (*See* Laboratory Implementation Requirements LIR 402-10-01.4, Hazard Analysis and Control for Facility Work.) The AHA must be signed by an authorized representative of the Contractor and each lower-tier subcontractor having an employee subject to the AHA, certifying that the Contractor and subcontractor have reviewed, concur with, and will conform their employees' conduct and performance of work to the stated requirements. The AHA

shall include:

a) Site hazards (identified by the LANL work requester) and site controls.

b) Task hazards and controls associated with the work to be performed (identified primarily by the Contractor).

c) Permit requirements (*see* below).

d) Training requirements (*see* below).

e) Personal protective equipment requirements (*see* below).

f) Drawings or other documentation of protective measures required by contract or OSHA standards.

g) A Lightning Hazard and Safety Plan to protect its workmen during lightning storm conditions, required ONLY if the work creates a special exposure to lightning hazard. (See Appendix, Lightning Hazard and Safety Guideline)

2. Activity Hazard Analysis Change. The Contractor shall revise the AHA when a work activity has changed due to changes or modifications to the original scope of work or identification of additional hazards during the course of the project. The Contractor shall not conduct the affected work activity until the University has approved the amended AHA.

3. Safety Representative. The Contractor shall designate and describe the qualifications of its representative who will administer the Safety Program at the construction site.

4. Inspections and Sampling. The Contractor shall provide a schedule of exposure sampling and daily safety and health inspections to be conducted by the Contractor's safety representative during work time, and provisions to maintain records of any violations of safety and health requirements noted in the inspections and subsequent corrections. These records shall be provided to the Contract Administrator's Engineering Representative once a week and copies kept at the construction site for review by the University's safety inspector.

5. Safety and Health Meetings. The Contractor shall provide a schedule of safety and health meetings, which shall be conducted weekly or more often with all onsite construction personnel (including subcontractors), to emphasize safety and health

requirements and fire prevention. The schedule of meetings and minutes of each meeting (including names of participants) shall be provided to the Contract Administrator's Engineering Representative once a week and copies kept at the construction site for review by the University's safety inspector.

6. Safety Certification Program. The Contractor shall provide a description of the Contractor's program for certifying the safe operating condition and proper maintenance of earth-moving equipment, cranes, vehicles, pressure vessels, protective devices for portable electrical tools, and other portable equipment. Copies of the records of equipment maintenance and inspections shall be kept at the construction site for review by the University's safety inspector.

7. Illumination, Noise Control, and Housekeeping. The Contractor shall provide a description of the Contractor's program for ensuring adequate illumination, noise control, and housekeeping in work areas.

8. HazCom Program. The Contractor shall provide a description of the Contractor's Hazard Communication (HazCom) program to identify, and inform and train employees about, hazardous materials, gases, or liquids that may be introduced, produced, or encountered in the work area, as required by the OSHA Hazard Communication Regulation, 29 CFR 1910.1200. This program must indicate how the Contractor will protect workers and the environment from these potential hazards. Copies of training records and certifications showing that employees have met all required training requirements for the use and handling of toxic or hazardous materials, gases, or liquids shall be kept at the construction site for review by the University's safety inspector.

9. Personal Protective Equipment. The Contractor shall provide a description of the Contractor's procedure for ensuring proper usage of personal protective equipment, as follows:

   a) All workers within the construction site or area must wear personal protective equipment at all times, including hard hats, eye protection, safety shoes, and protective clothing (long pants and shirts with sleeves covering the shoulders). Large signs must be posted informing anyone entering the site of this requirement.

   b) Workers must use additional protective gear, such as ear protection, respirators, face protection, and gloves, as appropriate.

10. Permits and Procedures. The Contractor shall provide a list of the permits and procedures that must be acknowledged or approved by the University prior to conducting project activities. Unless otherwise provided in writing by the Contract Administrator, the Contractor shall initiate action to obtain the University's approval of permits, including the submission of standard operating procedures when needed, before the anticipated date of a covered activity. The following activities require permits or approval of procedures:

    a) Confined Space Entry. The Contractor must have a confined space entry plan approved by the University in accordance with LANL Administrative Requirement 8-1, Confined Spaces, for any confined space activity that contains:

        (1) or has a potential to contain a hazardous atmosphere;
        (2) a material that presents an engulfment hazard;
        (3) an entrapment hazard; or
        (4) any other serious health or safety hazard.

        (*See* Appendix 1, *Confined Space Guide*.)

    b) Excavation. The Contractor must have a LANL permit for any excavating, trenching, saw cutting, core drilling, or jack hammering operation that will penetrate ground, slabs, or floors, to ensure that any existing utilities are located and marked.

    c) Spark/Flame Producing Operations. The Contractor must have a LANL Special Work Permit for any spark- or flame-producing operations that constitute a fire hazard, unless such operations are covered by a standard operating procedure (SOP) or conducted in areas designed for such operations. Additional Special Work Permits are required if such work is to be performed in a limited egress/confined space or an area from which explosives have not been removed, or involves the use of radioactive or hazardous materials, unless these special considerations are covered in the applicable SOP.

    d) Energized Electrical Work. The Contractor must have a LANL special electrical work permit (SEWP) to perform any energized electrical work, including diagnostics and testing of energized equipment.

11. Lockout/Tagout (LO/TO) of Hazardous Energy Sources. The Contractor must implement the LANL LO/TO program that addresses all hazardous energy sources (not limited to electrical circuits) LIR 402-860-01.0, "Lockout/Tagout for Personnel Safety"

will govern all work requiring LO/TO. Implementation of the LANL LO/TO program requires personnel who will have a need to control hazardous energy sources to be trained by LANL ESH-13 EDS Course 13337. Equipment that is powered electrically, pneumatically, or hydraulically must be locked out and/or tagged when it is to be shutdown for secondary installations, tie-ins, or test shutdowns and when personnel could be endangered by inadvertently energizing this equipment. Exemption: Contractors performing "greenfield construction" may submit their own written LO/TO program consistent with 29 CFR 1910.147 for review and approval by LANL, or may elect to implement the LANL program.

12. Penetrations. If penetrations are to be made in walls, ceilings or roofs, the Contractor's superintendent must evaluate each surface by consulting records, as- built drawings, engineering plans, visual observations, testing meters, or other means to determine if hidden utilities or other hazards may be present. If utilities are determined to be present, they must be de-energized before the penetration is made. When a positive determination cannot be made that no utilities are present, the Contractor must treat the penetration as blind and provide employees with appropriate personal protective equipment (e.g., approved and appropriately rated rubber insulated gloves with outer leather gloves, eye protection, rubber outer boots). In addition, only double insulated power tools, and nonconductive ladders and other equipment may be used while performing such penetrations. If any unknown hazard is suspected or encountered (e.g., warning tape, concrete covering on high or medium voltage lines), the Contractor must suspend work immediately until the proper controls are applied to eliminate the hazard.

13. Discipline and Discharge. The Contractor shall provide a description of the Contractor's procedure for removal of careless or incompetent employees.

14. First Aid Program. The Contractor shall provide a list of employees available at the site who are currently certified to administer first aid, and provisions for emergency services, including availability of a person or persons trained in first aid and CPR onsite at all times when work is being done. The names of these persons must be posted at the construction site. Not having such a person present shall be grounds for a stop work order by the University.

15. Fire Prevention Program. The Contractor shall provide a description of its fire prevention program, including:

    a) A method for alerting employees and the local fire department in case of a fire.

b) Instructions for notifying the fire department, to be posted on all telephones. Personnel must be instructed on the first day that they are onsite.

c) Notification of Station 7 (Fire Department) as to the location of the site.

d) Identification of all activities and materials that may cause fires, and fire prevention precautions to be taken.

e) Provisions for maintaining clear access to all areas for fire engines and hose lines.

f) Provisions for the prompt removal of combustible debris.

g) Provisions to check at the end of each day for fires or potential fires.

16. Safety Orientation and Training. The Contractor shall provide a description of its provisions to ensure that each employee has the experience, training, and required certification to work safely on the job, in accordance with paragraph F., Training Requirements hereunder, including:

a) Initial safety and health orientation for each employee, including employee rights and responsibilities, Contractor rights and responsibilities, use and maintenance of required personal protective equipment, alcohol and drug abuse policy, first aid and medical facilities, general project hazards with policies and procedures addressing these hazards, hazard recognition and procedures for reporting or correcting unsafe conditions or practices, fire prevention and control, emergency response procedures, including local warning and evacuation systems, access to employee monitoring data and medical records, location and access to project safety and health plan, and University programs and procedures applicable to the project; and

b) Availability of all records of required training to the Contract Administrator, project manager, and other personnel with oversight responsibilities.

E. Additional Safety Requirements. The following clauses shall be included in the Contract when the respective site hazards have been identified by LANL:

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NOTE TO CA: If checked, include applicable document(s), and sequentially number as Appendix #X, beginning with #2. Appendix 1 is Confined Space Guide, see 10(a).

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( ) Lead Exposure. The Contractor shall comply with the OSHA Construction Lead Regulation, 29 CFR 1926.62. (*See* attached *Lead Exposure Guide*.)

( ) Asbestos Exposure. The Contractor shall comply with the OSHA Construction Asbestos Regulation, 29 CFR 1926.1101. (*See* attached *Asbestos Guide*.)

( ) Respirator Usage. The Contractor shall comply with the OSHA Respiratory Protection Regulation, 29 CFR 1910.134, and ANSI Z88.2. (*See* attached *Respirator Guide*.)

( ) Fall Protection Program. The Contractor shall comply with the OSHA Construction Fall Protection Regulation, 29 CFR 1926.501. (*See* attached *Fall Protection Guide*.)

( ) Electrical Safety Program. The Contractor shall comply with the LANL Electrical Safety Program, (*See* attached *Electrical Safety Program*.)

F. Training Requirements. The Contractor shall be responsible for using qualified personnel and providing appropriate training to its personnel, in accordance with the following requirements:

1. In areas where applicable regulations require a designated "Competent Person" (e.g., scaffolding, excavations), the names of the designated individuals shall be posted at the construction site.
2. In cases where individuals require specialized training, the Contractor shall provide copies of training certificates and shall certify that the individuals are qualified to perform their jobs.

3. The Contractor shall train workers on the contents of the AHA, inform workers of site and task hazards and controls during a walkdown of the work-site, and conduct a pre-job safety briefing for all new work and, as needed, repetitive work.

4. The Contractor shall be responsible for maintaining trained crews on the construction site for the duration of the project. Training shall be scheduled as soon as practicable upon Notice of Award. The University will provide the following training of Contractor employees during the initial training period at no charge to the Contractor:

   a) General Employee Training (GET) - 8 hours.
   b) Radiation Worker I (Radworker I) - 16 hours.
   c) Radiation Worker II (Radworker II) - 16 hours.
   d) Waste Documentation Forms - 2 hours
   e) Lockout/Tagout(LO/TO) (if required by LANL program).

5. The University will make reasonable efforts to provide additional training to Contractor employees after the initial training period on request. The Contractor will be responsible for all cost related to this additional training. Whether or not the University provides such additional training, the Contractor shall be responsible for providing trained employees at no additional cost to the University or delay in schedule.

6. All work classifications requiring certification or training must be maintained at the construction site to facilitate inspection by the University.

7. Before a LANL badge will be issued, all Contractor employees who will perform work on LANL premises for more than 10 workdays during a 12-month period or will require unescorted access to nuclear facilities or radiological controlled areas must successfully complete LANL's General Employee Training (GET) course, by passing the test after taking the class or studying the written materials. All such Contractor employees must also complete an annual GET update by reading ES&H training booklets provided for the purpose. Contractor employees with current GET badges from other DOE sites may obtain a LANL GET badge by reading LANL specific material.

8. Contractor employees who will require access to radiological or contamination areas must successfully complete the LANL's 16-hour Radiological Worker I or II Course, by passing the practical and written examinations after taking the class or studying the written materials. Retraining every two years is required. Contractor employees with current Radworker badges from other DOE sites may obtain LANL Radworker badges by presenting the DOE badge and reading LANL specific manual.

9. Training on Waste Documentation Forms is required for individuals who must execute Waste Profile Forms or Chemical Waste Disposal Forms.

G. Contractor Inability to Mitigate a Known Hazard. If immediate corrective action is not possible or the responsibility falls outside the scope of the project, the Contractor must immediately do the following:

1. Notify the Contract Administrator of the location and describe the hazard;

2. Inform all affected employees of the danger and its location;

3. Post warning signs at the location of the hazard describing the nature of the hazard;

4. Take further interim control measures to protect employees;

5. Secure approval from the Contract Administrator of measures taken; and

6. Notify the Contract Administrator of any concerns that implementation of a change order or modification would conflict with a contract term, compromise the safety or health of an individual, or harm the environment.

H. Deliverables. The Contractor must submit the following to the Contract Administrator:

1. Within 24 hours after an injury or accident, the *Employers' First Report of Injury or Illness* (New Mexico Workers Compensation Administration Form 1A-1) if an injured employee loses work time or requires medical treatment beyond first aid.

2. Within 24 hours of any incident that results in Government, University, Contractor, or private property is lost or damaged as a result of this Contract, an *Individual Accident/Incident Report* (U.S. DOE form F5484.X).

3. Within 5 working days after the end of each month, a *Monthly Man-Hours Report* listing each craft or labor category separately. Use BUS-5-5 Form 2 for man-hour format.

4. Submit the OSHA Log 200 of injuries reported to OSHA 5 days after the end of the project.

I. Injury Reporting. A Contractor employee who is injured or becomes ill onsite during normal working hours should report to the LANL Occupational Medicine Facility for evaluation and possible treatment. The Contractor shall immediately report any injury to an employee onsite to the Contract Administrator by telephone, fax, email or directly. The Contractor shall report to the Contract Administrator any possible exposure to a chemical or air contaminant as a result of an unanticipated event (e.g., spill) or routing operations (e.g., lead or asbestos) and any sampling that indicates an OSHA or ACGIH action level, permissible exposure limit, ceiling, short-term exposure level, or biological testing (e.g., blood lead) has been exceeded.

J. Facility Specific Requirements. If additional controls, permits, or programs are required by the Facility Manager, they must be submitted by the Contractor and approved by the University.

K. Access and Records for Verification. The Contractor shall provide access to the construction site and furnish all records and documentation necessary to enable the University to verify

compliance with the University's safety and health requirements and the Contractor's Safety Program.

SP-5, Contractor's Superintendent

A. In accordance with the General Provision entitled *Superintendence by the Contractor,* the Contractor shall, within ten days after Contract award, submit to the Contract Administrator for the University's approval, the name, résumé, and list of three references for the proposed superintendent. Within fourteen days of receipt of the information, the University shall approve or disapprove the superintendent in writing. If the superintendent is disapproved by the University, the Contractor shall submit the name, résumé, and list of references for an alternate superintendent within fourteen days after receipt of a notice that a previously proposed superintendent has been disapproved.

B. The Contractor's Superintendent must be an employee of the Contractor.

SP-6, Removal of Employee

The University, in its sole discretion, may temporarily or permanently bar from the Laboratory site any Contractor employee or subcontractor employee who does not work in a safe manner, as demonstrated either by repeated violations or single serious violation of applicable safety requirements. The Contractor will not be compensated for any costs resulting from the barring of an employee under this provision.

SP-7, Termination for Cause

In performing work pursuant to this Contract, the Contractor and its subcontractors shall comply with all health and safety requirements of the Laboratory and the standards of the Occupational Safety and Health Administration (OSHA). Any failure of the Contractor, its employees, its subcontractors, or their employees to comply with such requirements and standards that results in a serious injury or fatality or reflects a persistent disregard for health and safety shall be cause for the University at its sole discretion, to require corrective action, to suspend work under this Contract until corrective action has been completed, or to terminate this Contract for default. If the University suspends work pursuant to this clause, the Contractor shall not be entitled to an extension of time, compensation, or damages with respect to, or resulting from, the suspension. The General Provision entitled *Default* shall apply to any termination pursuant to this clause. A termination pursuant to this clause shall be considered in determining whether the Contractor or any subcontractor whose acts or omissions were the basis for the termination is a responsible bidder for any subsequent contract with the University.

SP-8, Contractor Performance Evaluation

The Contractor will be evaluated by the University periodically during the performance of the Contract in the areas of General Performance, Schedule Performance, and Safety Performance. A preliminary Contractor Performance Report will be prepared and the Contractor will be provided an opportunity to comment on its content. The Contractor's comments must be provided to the Contract Administrator within 15 working days from the date of transmittal of the preliminary report to the Contractor. Upon receipt of any comments from the Contractor or the passage of 15 working days without comments having been received, the University shall prepare a final report of the periodic evaluation.

At the completion of the contract, the University shall prepare a final Contractor Performance Report based upon the compilation of the periodic reports. The Contractor will be provided an opportunity to comment on its content. The Contractor's comments must be provided to the Contract Administrator within 15 working days from the date of transmittal of the preliminary report to the Contractor. Upon receipt of any comments from the Contractor or the passage of 15 working days without comments having been received, the University shall prepare the final Contractor Performance Report.

The University intends, at sometime in the future, to include Contractor Performance Reports as a factor in the determination of responsible bidder for new contract awards.

SP-9, Conflict Provisions

A. Any conflict between or among the Contract documents shall be resolved by the following order of decreasing precedence:

- Special Provisions
- General Provisions
- Specifications
- Drawings

B. Unless otherwise specifically provided, the current revision of each publication, standard, or other authority incorporated in the Specifications by reference shall govern. "Current revision" means that revision in effect at the time of the solicitation date, which is specified on the Bid Form. In the event of a conflict between any documents incorporated in this Contract by reference and any express provision of this Contract, the Contract shall govern.

C. The Contractor shall not be relieved of performing the details of any work manifestly or customarily performed to carry out the intent of the Drawings and Specifications. All such omissions or misdescribed details of the work shall be performed as if fully and correctly set forth and described in the Drawings and Specifications.

SP-10, Contract Documents

A. The Contractor will be furnished, without charge, 10 sets of Drawings and Specifications.

B. The work shall be performed in strict accordance with the following documents, which form a part of this Contract:

1. University of California, Los Alamos National Laboratory, Special Provisions No. [ ], dated [ ].
2. University of California, Los Alamos National Laboratory, General Provisions: Fixed Price Construction Contracts, dated July 15, 1991.
3. U. S. Department of Labor, General Wage Decision No. NM000001, Modification No. 6, publication date 12/08/2000,
4. University of California, Los Alamos National Laboratory, Representations and Certifications, which were completed by the Contractor and submitted to the University.
5. Specifications for [ ], PI [ ], dated [ ].
6. Drawing Number [ ], Sheet No.[ ] thru [ ]. As listed on Sheet 1 thereof.

SP-11, State Lien Statutes

State lien statutes are not applicable to construction Contracts for Federal Facilities; therefore, Preliminary Notices to the University will not be acknowledged. The Miller Act (40 USC 270a-270d) may provide a remedy for unpaid persons or firms furnishing labor and/or materials in the prosecution of the work provided under this Contract.

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NOTE TO CA: Use Only One of The Following Two Paragraphs.
The Liquidated Damages Clause Must be
Used Unless Approval is Received From the Group Leader

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SP-12, Liquidated Damages

If the Contractor fails to complete the work within the time specified in this Contract, including any extension thereof, the Contractor agrees to pay, and authorizes the University to withhold from any money due to the Contractor as fixed and agreed liquidated damages the sum of [_____] ( ) for each calendar day of delay. Liquidated Damages will be assessed until the Laboratory determines that the Contract is substantially complete. Substantial completion is defined as "when the work or

designated portion thereof is sufficiently complete, in accordance with the Contract documents, so the University may occupy the work or designated portion thereof for the use for which it is intended."

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OR

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SP-12, Damages For Delay

There shall be no fixed liquidated damages assessed for delay in completion of the work. However, the Contractor shall be liable for any actual damages suffered by the University or the Government for failure or refusal of the Contractor to complete the work within the time specified in this Contract in accordance with the General Provisions of this Contract. The Contractor agrees to pay and authorizes the University to withhold from any money due to the Contractor any actual damages suffered by the University or the Government for delay in the completion of work.

Actual Damages will be assessed until the Laboratory determines that the Contract is substantially complete. Substantial completion is defined as "when the work or designated portion thereof is sufficiently complete, in accordance with the Contract documents, so the University may occupy the work or designated portion thereof for the use for which it is intended."

SP-13, Temporary Field Office

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NOTE TO CA: Use Only One of the Following Three Paragraphs

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The Contractor is not required to furnish and maintain a field office during the performance of this Contract.

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OR

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The Contractor is required to furnish and maintain a field office during the performance of this Contract. Such an office shall be equipped and staffed to conduct the work under this Contract. It shall be established by the Contractor at a location in the vicinity of the worksite and approved by the Contract Administrator. A copy of all Drawings, Specifications, approved submittals, and other information pertinent to the prosecution of this Contract work shall be kept by the Contractor at this office.

Authorized representatives of the University shall have access to the office and telephone usage at all reasonable times.

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OR

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The Contractor is required to furnish and maintain a field office during the performance of this Contract. Such office shall be equipped and staffed to conduct the work under this Contract. It shall be established by the Contractor at a location in the vicinity of the worksite and approved by the Contract Administrator. A copy of all Drawings, Specifications, approved submittals, and other information pertinent to the prosecution of this Contract work shall be kept by the Contractor at this office. Authorized representatives of the University shall have access to the office and telephone usage at all reasonable times.

Additionally, a temporary field office for a University inspector shall be provided. This office shall be approved by the Contract Administrator and shall be a minimum of 8' x 10' with the following:

- separate door key
- work table
- chair
- approximately 10 linear feet of shelving
- adequate heat
- power
- lighting, and
- janitorial services

The office shall be separate from similar facilities used by the Contractor and shall have an entrance door with access available to the construction inspector at all times.

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NOTE TO CA: Use This Clause for all Areas

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SP-14, Security Procedures

A. The work under this Contract will be performed in the area or areas listed below.

SECURITY AREA	CLEARANCE DESIGNATION
TA-03-410	No Clearance Required
TA-03-29	Q Clearance Required
TA-03-40	L Clearance Required

B. The following procedures apply to work in all areas at Los Alamos National Laboratory (LANL):

1. Government policy requires that only United States citizens may be employed, be assigned to perform work, visit or otherwise enter the LANL. The Contractor shall take effective measures to determine the citizenship of each person entering the LANL, and shall not permit non-citizens to enter such sites. If the Contractor intends to employ non-U.S. citizens, a special permit may be granted by the University. The application for an exception shall be obtained from and submitted to the Contract Administrator. Approval must be granted by the Laboratory before access will be allowed onto Laboratory property. There is no assurance that the University will grant any particular requested exception. If the Contractor permits non-U.S. citizens to enter the site without special permission, the Contractor will receive notification of a security infraction. Such an infraction may be considered in future determinations of a Contractor's responsibility.

2. The Contractor shall provide upon request from the Contract Administrator the name of any Contractor or subcontractor employee together with the employee's address and citizenship.

3. The Contractor shall furnish in writing to the Contract Administrator information regarding any deviation from the normal LANL work hours (8:00 a.m. - 5:00 p.m., Monday - Friday), or work week and holidays.

4. Any digging of holes under security fencing, cutting or removing of security fencing, altering of gates or otherwise providing access into security areas by means other than established access points shall be accomplished only in the presence of a Protective Force Security Inspector and only after obtaining approval from the Contract Administrator 48 hours in advance. At the end of each work day, the Contractor shall repair, replace, or provide adequate barriers to preclude unauthorized entry into Security Areas through the holes dug or cuts or through modified gates or other alteration of the security perimeters. Such barriers shall be inspected and approved by University security representatives. During the workday, a Protective Force Security Inspector shall guard the temporary opening.

5. All persons, vehicles, parcels, etc., are subject to search when entering or leaving any posted Government property.

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<u>NOTE TO CA</u>: Include Paragraph (C) For Work In Areas Where "Q" Clearances Are Required; Do Not Include Paragraph (D)

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The following areas require a "Q" clearance to access:

TA-03-29 (CMR, except administrative wing)
TA-03-35/66 (Sigma)
TA-03-39 (Shops)
TA-03-132/1498 (CCF/LDCC)
TA-03-164 (storage)
TA-18-26 (hillside vault)
TA-18-23 (Kiva 1)
TA-18-32 (Kiva 2)
TA-18-116 (Kiva 3)
TA-16 (East Area Magazines/machining facilities—Q Clearance required for ES&H badge)
TA-35-213 (target fabrication)
TA-37 (Access granted through TA-16 magazines)
TA-41-1/4 (ice house is 1--building 4 gives access to building 1)
TA-55-4

****

C. In areas requiring a "Q" clearance, the following security procedures apply:

1. Prior to commencing work under this Contract, the Contractor shall meet with the University security representatives to review security measures that apply to this Contract.

2. All employees engaged in work at the site must be U.S. citizens and must possess DOE "Q" access authorizations or have been issued an "Escort Required" badge and be escorted at all times while within the area by a person possessing a DOE "Q" access authorization. The Contractor shall be responsible for providing such escorts.

3. On Contracts with a performance period (*see* Special Provision entitled *Commencement, Prosecution, and Completion of Work*) longer than one year the University may, at its sole option, process security access authorization requests for the

Contractor's employees. Such access authorization requests are requested by the University, and authorized or denied by the Government at its sole discretion. The University does not promise or warrant that an access authorization request for any employee will be granted. In recent periods, the Government has taken one to two years to grant or deny each "Q" security access authorization request. For each employee to be processed for access authorization, the Contractor shall submit the following information a minimum of 360 days in advance of need of entry into a Security Area:

a) Six completed copies *of Personnel Security Questionnaire* (Form DOE-1), Parts I and II.

b) One *Security Acknowledgment* (DOE F-5631.18).

c) Three Fingerprint Cards (FD-258).

d) If the employee is a military veteran, one copy of *Separation from Military Service* (DD Form 214) or other acceptable evidence of military service.

e) Original and one copy of *Authority for Release of Information* (DOE F-5637.1).

4. If a clearance is granted, each cleared employee shall attend an indoctrination security lecture prior to receiving a security badge. Upon termination of the employee or expiration of this Contract, the Contractor shall ensure that each cleared employee completes a *Security Termination Statement* (Form DOE-136) and attends a security termination lecture. Arrangements for the two required lectures shall be made through the Contract Administrator.

5. After the indoctrination lecture provided by University personnel each cleared employee shall report to the LANL Badge Office, Building SM-490, TA-3, for photograph and issuance of badge. Badges will be valid for the duration of the Contract period only. All badges will remain the property of the DOE, and the Contractor shall be responsible for ensuring that the badges are returned upon the termination of the employee or expiration of the Contract.

6. All personnel shall display security badges on their outer clothing above the waistline while in Security Areas and shall remain within their assigned work areas.

7. Vehicles driven by uncleared drivers delivering construction materials from the Contractor, subcontractors, vendors, and suppliers will be permitted to enter Security Areas provided they have been issued an "Escort Required" badge and are under escort of personnel possessing "Q" access authorizations. In order to obtain "Escort Required" badges for uncleared persons making deliveries inside a "Q" cleared area, the Contractor shall submit to the Contract Administrator the information needed to complete an *Official Laboratory Visitor Request* form (Form 864). The information needed is as follows:

   1. Full name as it appears on a picture I.D.
   2. Correct name of company
   3. Completed citizenship verification form

   This form must be approved by the University's Security Office before it becomes effective. The Contractor shall make arrangements through the Contract Administrator 48 hours in advance of the need for these visits. The Contractor shall specify the number of badges needed and when it would like to secure such badges. Badges will be issued to the Contractor at the University Security Office. Upon completion of the work, the Contractor shall return the badges to the Contract Administrator.

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<u>NOTE TO CA:</u> Include Paragraph (D) For Areas Requiring An "L" Clearance; Do Not Include Paragraph (C)

The following areas require "L" Clearance or "Q" Clearance depending upon the security access required. Check with requester to verify which access is required.

TA-00 (record storage center*)
TA-03-29 (CMR excepting the Material Access Areas)
TA-03-40 (West wing)TA-18 (except the kivas)
TA-03 (Administrative complex*)
TA-03 (OS complex*)
TA-06 (Two-Mile Mesa)
TA-08 (Anchor Site West*)
TA-09 (Anchor Site East*)
TA-11 (K Site)
TA-14 (Q Site)
TA-15 (R Site*)
TA-16 (S Site West Area*)

TA-21 (DP Site)
TA-28 (Magazines)
TA-33 (HP Site*)
TA-35 (TSL 68/86*)
TA-36 (Kappa Site*)
TA-39 (Ancho Canyon*)
TA-40 (DF Site*)
TA-41 (except buildings 1 & 4*)
TA-46 (WA Site*)
TA-48 (Radiochemistry*)
TA-52 (Reactor development*)
TA-53 (NPB/GTA)
TA-55 (except PF4)
TA-64 (Central Guard Facility*)
TA-66 (ATAC*)

* These sites may contain SRD or higher and, therefore, may require a "Q" clearance to enter portions of these areas.

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D. Security Procedures for Areas Requiring "L" Clearances**.** In areas requiring "L" Clearances, the following security procedures apply:

1. Prior to commencing work under this Contract, the Contractor shall meet with the University security representatives to review security measures that apply to this Contract.

2. All employees engaged in work at the site must either possess DOE "Q" or "L" clearances or have been issued an "Escort Required" badge and be escorted at all times while within the area by a person possessing a DOE "L" access authorization. The Contractor shall be responsible for providing such escorts.

3. On Contracts with a performance period (*see* Special Provision entitled *Commencement, Prosecution, and Completion of Work*) longer than six months the University may, at its sole option, process security access authorization requests for the Contractor's employees. Such access authorizations are requested by the University, and authorized or denied by the Government at its sole discretion. The University does not promise or warrant that an access authorization request for any employee will be granted. The Government has taken eight to ten weeks to grant or deny each "L" security access authorization request. For each employee to be processed for "L"

access authorization, the Contractor shall submit the following information a minimum of 90 days in advance of need of entry into a Security Area:

a) Six completed copies of *Personnel Security Questionnaire* (Form DOE-1), Parts I and II.

b) One *Security Acknowledgment* (DOE F-5631.18).

c) Three *Fingerprint Cards* (FD-258).

d) If the employee is a military veteran, one copy *of Separation from Military Service* (DD Form 214) or other acceptable evidence of military service.

e) Original and one copy of *Authority for Release of Information* (DOE F-5637.1).

4. If a clearance is granted, each cleared employee shall attend an indoctrination security lecture prior to receiving a security badge. Upon termination of the employee or expiration of this Contract, the Contractor shall ensure that each cleared employee completes a *Security Termination Statement* (Form DOE-136) and attends a security termination lecture. Arrangements for the two required lectures shall be made through the Contract Administrator.

5. After the indoctrination lecture provided by University personnel each cleared employee shall report to the LANL Badge Office, Building SM-490, TA-3, for photograph and issuance of badge. Badges will be valid for the duration of the Contract period only. All badges will remain the property of the DOE and the Contractor shall be responsible for ensuring that the badges are returned upon the termination of the employee or expiration of the Contract.

6. All personnel shall display security badges on their outer clothing above the waistline while in Security Areas and shall remain within their assigned work areas.

7. The number of escorts required for a given project shall be based on the number of uncleared personnel working within an area and the capability for visual contact with all uncleared personnel at all times by the escort or escorts. A general rule of thumb is that an escort can act as escort for a maximum of 4 or 5 people who require escorting.

8. In order to obtain “Escort Required” badges for uncleared persons working or making deliveries inside a Security Area the following procedures apply:

a) For a work period less than thirty (30) days, the Contractor shall submit to the Contract Administrator the following information for each uncleared individual:

(1) Full name as shown on picture I.D.,
(2) Name of company person is employed by,
(3) Citizenship Verification Form, and
(4) Vehicle license number, make and year, and company of vehicles entering the security area.

Also required is the full name, the company, and Z numbers of the individuals who will be responsible for escorting the individuals.

An *Official Laboratory Visitor Request* form (Form 864) will be prepared by the Contract Administrator. This form must be submitted to and approved by the University Security Office before it becomes effective. The Contractor shall make arrangements through the Contract Administrator 48 hours (excluding weekends and holidays) in advance of the need for these badges. The Contractor shall specify the time and duration when such badges are required. Badges will be issued to the Contractor at the University Security Office. Upon completion of the work, the Contractor shall return the badge to the University Security Office.

b) For work periods greater than thirty (30) days, the Contractor shall submit to the Contract Administrator the following information for each uncleared individual:

(1) Full name as shown on picture I.D.,
(2) Name of company person is employed by,
(3) *Citizenship Verification Form*, and
(4) Vehicles license number, make, year, and company of vehicles entering the security area.

Also required is the full name, the company, and Z number of the individuals who will be responsible for escorting the individuals. A list containing the above information will be prepared by the Contract Administrator. This list must be submitted to and approved by the University Security Office before it becomes effective. The list will be effective for ninety (90) days and may be extended by notification to the Contract Administrator.

The list is forwarded by the University's Security Office to the University's Protective Force subcontractor for preparation of an area access list that will be

maintained at the security entry station. The Contractor shall make arrangements through the Contract Administrator 48 hours (excluding weekends and holidays) in advance of the need for the escort badges. Update information to the access list needs to be provided a minimum of 48 hours prior to the designated need date.

"Escort required" badges will be obtained from and returned to the escort every day. All authorized uncleared personnel must present a picture identification, such as a drivers license, prior to being authorized entry by the security inspector.

c) For the permanent work crews, a Special Security Order will be written to facilitate their access. The Contractor shall provide the full names, the firm's name, and citizenship of all workers to be placed on the order at least five (5) University working days before access is needed. Make, year, and license number of all vehicles that are to access the site are also to be provided as well as a description of all self-propelled equipment. Prior to taking equipment such as radios, cellular phones, and computers into any secure area, approval must be obtained. Provide the Contract Administrator with a list of the type of equipment, receiver and/or transmitter, make, model, and operating frequency range. The head escort will be issued a block of "Escort Required" badges that he/she is to issue and collect each day. All workers must carry a picture identification while in the security area.

E. The requirements for securing eligible personnel and proper personnel security clearances for work within "L" and "Q" clearance areas and for complying with other security regulations and procedures shall not be considered cause for an extension of time for performance of the Contract work or for extra payments under the Contract. The cost of processing DOE "Q" or "L" access authorizations, however, will be borne by the Government.

F. Whenever the work under this Contract requires the issuance of "Q" Cleared, "L" Cleared, or "Escort Required" badges as described in paragraphs (D) and (E) above, the Contract Administrator may withhold final payment to the Contractor until all such badges are returned to the Contract Administrator as required by paragraphs (D) and (E) above.

G. Notwithstanding the fact that the Contract work is being performed within a DOE posted area, a "Q" Cleared Area, or an "L" Cleared area, the responsibility for protection of property associated with the Contract work rests with the Contractor in accordance with the applicable clauses of this Contract.

SP-15, Unclassified Controlled Nuclear Information (UCNI)

A. Documents originated by the subcontractor or furnished by the Government through the

University to the subcontractor in connection with this project may contain Unclassified Controlled Nuclear Information (UCNI) as defined in Section 148 of the Atomic Energy Act of 1954, as amended. Therefore, the following limitation notice is stamped or typed on the cover of the documents:

UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION
NOT FOR PUBLIC DISSEMINATION

Unauthorized dissemination subject to civil
and criminal sanctions under section 148 of
the Atomic Energy Act of 1954, as amended
(42 U.S.C. 2168).

The subcontractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations, requirements, and instructions.

(b) UCNI may only be made available to authorized individuals. "Individuals" for purposes of this subcontract, means only personnel who have a need to know in the performance of official duties or DOE authorized activities and who are employees of the Government, employees of a Government contractor or subcontractors, or employees of a prospective Government contractor or subcontractor for the purpose of bidding on a Government contract.

(c) All parties receiving UCNI shall be obliged under penalty of law to protect such information as required by 10 CFR 1017.17, such responsibility including but not limited to the following:

(1) **General**. UCNI requires protection from unauthorized dissemination. UCNI must be protected and controlled in a manner consistent with that customarily accorded other types of unclassified but sensitive information (e.g., proprietary business information, personnel, or medical records of employees, attorney-client information). The subcontractor shall establish and maintain a system for the protection of UCNI in its possession or under its control that is consistent with the physical protection standards established in this section. Each authorized individual or person granted special access to UCNI who receives, acquires, or produces UCNI or a document or material containing UCNI shall take reasonable and prudent steps to ensure that it is protected from unauthorized dissemination.

(2) **Protection in Use or Storage.** An authorized individual or a person granted special access to UCNI shall maintain physical control over any document or material containing an UCNI notice that is in use so as to prevent unauthorized access to it. When any document or material containing an UCNI notice is not in use, it must be

stored in a secure container (e.g., locked desk or file cabinet) or in a location where access is limited (e.g., locked or guarded office or controlled access facility).

(3) **Reproduction.** A document or material containing an UCNI notice may be reproduced to the minimum extent necessary consistent with the need to carry out official duties without permission of the originator, provided that the reproduced document or material is marked and protected in the same manner as the original document or materials.

(4) **Destruction.** At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than ¼-inch wide strips (provided that the disposal is authorized by the archivist of the United State under 41 CFR 101-11.4 and by agency records disposition schedules).

(5) **Transmission.**

(A) A document or material containing an UCNI notice must be packaged to prevent disclosure of the presence of UCNI when transmitted by a means that could allow access to the document or material by a person who is not an authorized individual or a person granted special access to UCNI. The address and return address must be indicated on the outside of the package.

(B) A document or material containing an UCNI notice may be transmitted by the following means:

(i) U.S. first class, express, certified or registered mail;
(ii) Any means approved for the transmission of classified documents or material;
(iii) An authorized individual or a person granted special access to UCNI when he or she can
control access to the document or material being transmitted; or
(iv) Any other means determined by the Assistant Secretary for Defense Programs to be sufficiently secure.

(C) UCNI may be discussed or transmitted over an unprotected telephone or telecommunications circuit when required by operational considerations. More secure means of communication should be used whenever possible.

(6) **Automated Information Systems (AIS).** The AIS or AIS network must ensure that only personnel authorized access to UCNI can access that information. For instance, networks interconnected with a public switched - broadcast network -like Internet, must provide provisions (e.g., authentication, file access controls, etc.) to ensure that UCNI is protected against unauthorized access. UCNI being transmitted over broadcast networks like the Internet, where unauthorized access is possible, must provide protection (e.g., encryption) to ensure that the information is not improperly accessed.

(d) **Civil Penalty.** Any person who violates Section 148 of the Atomic Energy Act or any regulation or order of the Secretary issued under Section 148 of the Atomic Energy Act, including these regulations, is subject to a civil penalty. The Assistant Secretary for Defense Programs may recommend to the Secretary imposition of this civil penalty, which shall not exceed $100,000 for each violation.

SP-16, Vehicular Access and Closing of Streets

A. When operations in connection with project work necessitate the closing of streets, removal of traffic signs or interference with normal traffic the Contractor shall arrange such in advance with the Contract Administrator and, when appropriate, the Los Alamos County Police Department. In addition, the Contractor shall provide and maintain appropriate barricades, signs, markers, flares or other devices as may be required by the Police Department for traffic guidance and public safety. Barricades, traffic control devices and signs so provided shall meet the requirements sent forth in the "Manual on Uniform Traffic Control Devices" (U.S. Department of Transportation, 1978).

B. The Contractor shall maintain a minimum of one open traffic lane at all times during construction.

C. The Contractor, upon completion of its work or when directed by the Contract Administrator, shall immediately replace (or relocate and install, as directed) all presently existing safety, security, utility and similar markers and signs affected by the construction. All damaged signs will be replaced by the University at the Contractor's expense.

SP-17, University Representatives - Correspondence

A. The University Contract Administrator is:

{*Fill in Name*}
University of California

Los Alamos National Laboratory
P.O. Box 1663, Mail Stop M986
Los Alamos, New Mexico 87545
Phone: (505) 66 -

B. The Contract Administrator has designated for this Contract the Engineering Representative identified below. The Engineering Representative will represent the Contract Administrator in all technical, engineering or scheduling matters which do not affect or change the Contract work scope, price or performance period. The individual also represents the Contract Administrator in the coordination of the Contractor's work with other activities of the University.

The Contract Administrator hereby designates the following person as the Engineering Representative:

{*Fill in Name*}
University of California
Los Alamos National Laboratory
P.O. Box 1663, FSS-6, Mail Stop M984
Los Alamos, New Mexico 87545
Phone: (505) 66 -

C. The Contract Administrator or Engineering Representative may be replaced from time to time at the University's sole option. The University will notify the Contractor of replacements if any are made.

D. Correspondence - All Contractual and administrative correspondence shall be addressed to the Contract Administrator except as indicated below:

1. Technical Correspondence - Technical correspondence shall be addressed to the Engineering Representative with an informational copy of the correspondence to the Contract Administrator. Unless previously agreed to in writing by the Contract Administrator, the Contractor shall not at any time nor under any circumstances issue or otherwise provide technical correspondence to any other University or Government organization or individual without a concurrent copy being furnished to the Contract Administrator.

2. Subject Line(s) - All correspondence shall contain a subject line commencing with the Contract number, as illustrated below:

SUBJECT: Contract No. [ ], (*Insert Subject Topic After Contract Number.)*

3. Invoice Address: Address invoices to:

University of California
Los Alamos National Laboratory
P.O. Box 1663
Financial Management Operations, Mail Stop P240
Los Alamos, New Mexico 87545

4. Submittals: Send all submittals required by Specifications to:

_____
_____
_____

SP-18, Modification Proposals - Price Breakdown

In connection with any proposal it makes for a Contract modification, the Contractor shall furnish a price breakdown itemized as required by the Contract Administrator. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, Contract and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification shall be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by such date as may be specified by the Contract Administrator. Finally, the proposal shall include costs and time, if any, arising
from the necessary, reasonable, and foreseeable effect the modification has on unchanged work.

SP-19, University Field Personnel and Inspection

The work is subject to the general oversight of the Contract Administrator and is subject to inspection by his or her duly appointed inspectors to insure strict compliance with the terms of this Contract. No inspector is authorized to change any provision of the Drawings and Specifications, nor shall the presence or absence of any inspector relieve the Contractor from any requirements of this Contract. The designated Construction Inspector has the authority to inspect the work for quality and compliance with the Drawings and Specifications; establish lines, grades and controls for the work; and to recommend changes to the Contract Administrator pursuant to the General Provision entitled *Changes*. No interpretation of this Contract or direction shall be binding upon the University unless it is in writing and signed by the Contract Administrator.

SP-20, Construction Contract Special Tax Provision

A. The New Mexico Gross Receipt Tax imposed upon and measured by the money received by the Contractor for performance of this Contract is a tax included in the Contract price under paragraph (b) of the General Provision entitled *Federal, State and Local Taxes*. The Contractor shall include allowance for any increase or decrease in the tax rate and shall not make claim against the University for any increase or decrease during the Contract period.

B. Notwithstanding paragraph (b) of the General Provision entitled *Federal, State and Local Taxes*, the Contract price does not include any New Mexico Gross Receipts Tax levied upon or measured by property or services, or the value thereof, furnished by the University, under this Contract. The Contractor agrees to notify the Contract Administrator promptly of the imposition on the Contractor by the New Mexico Taxation and Revenue Department of any tax described in the preceding sentence and to refrain from paying such tax unless authorized in writing by the Contract Administrator.

C. The Contractor agrees to take any and all action directed by the Contract Administrator to resist the imposition of taxes described in paragraph B. of this provision, including, but not limited to, the institution in the Contractor's name of appropriate administrative or judicial proceedings prescribed by the New Mexico Tax Administration Act.

D. Provided the Contractor complies with all provisions of paragraphs B. and C. above and with the instructions of the Contract Administrator issued thereunder, the Contractor shall, in addition to the Contract price, be reimbursed for the payment of taxes described in paragraph B. plus all reasonable costs incurred by the Contractor as a result of compliance with such provisions and instructions, including but not limited to, penalties, interest, attorney's fees and other costs of legal proceedings.

SP-21, Use of Explosives

The use of explosives is not permitted, unless conditions for their use and the Contractor's liability therefore are expressly stated in the Specifications or unless such use is authorized in writing by the Contract Administrator with express conditions concerning use and liability.

SP-22, Work Forces - Work Periods

A. The Contractor shall furnish sufficient forces, construction plant, and equipment, and shall work such hours, including night shifts, overtime operations, Sunday and holiday work as may be necessary, to insure the prosecution of the work in accordance with the approved progress schedule. Before commencing work, the Contractor shall furnish a program of shifts, hours, and days per week to be worked and the approximate number of persons per shift. The Contractor shall notify the Contract Administrator 48 hours in advance of any change to the program.

B. If in the opinion of the Contract Administrator, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve its progress. The Contract Administrator may direct the Contractor to conduct overtime operations and to increase the number of employees or shifts or both, days of work, or the amount of construction plant, or all of them, and to submit for approval such supplementary schedules or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained.

C. Failure of the Contractor to comply with the requirements of this provision shall be grounds for determination by the Contract Administrator that the Contractor is not prosecuting the work with such diligence as will insure completion of the Contract within the time specified. (See General Provision entitled *Default - Fixed-Price Construction*.)

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NOTE TO CA: Choose One of the Following Three Scheduling Clauses. The Third Scheduling Clause Must be Used for Contracts Greater Than $1 Million and a Duration of More Than 6 Months. For Contracts Less Than $1 Million But More Than 6 Months, the CA Should Use His/Her Discretion in Choosing One of the Three Clauses.

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SP-23A, Schedules, Breakdowns, Contracts, Payments
(*See* General Provision entitled *Payments Under Fixed-Price Construction Contracts.*)

A. Progress Schedule. Within fifteen (15) calendar days after receipt of the Notice to Proceed and before payment of any invoice by the University, the Contractor shall submit the following to the Contract Administrator for approval:

1. An as-planned schedule in the form, detail and number prescribed by the Contract Administrator.

   a) A Critical Path type of schedule will be acceptable if accompanied by sufficient information and back-up data to satisfy the Contract Administrator.

   b) The as-planned schedule shall show the date of the commencement of work on each pertinent phase or item of construction (including interruptions in existing utility service), the percentage of scheduled completion at the end of each week, and the date of completion of each such phase or item of the work. If a Critical Path type schedule is used, the percentage of completion for each phase or item on the schedule shall be shown at the end of each week.

2. The schedule shall be revised by the Contractor from time to time to reflect all changes in Contract work and adjustments in time, money, or both that have been approved by the Contract Administrator.

   a) The revised schedule shall indicate labor, materials and equipment actually incorporated into the work (construction in place). No progress will be indicated for materials and equipment on the site but not incorporated in the work.

   b) Breakdown of Bid. Within fifteen (15) calendar days after receipt of Notice to Proceed and prior to payment of any invoices by the University. The Contractor shall submit a bid breakdown (in the form, detail and number prescribed by the Contract Administrator), totaling the Contract price, to the Contract Administrator for approval.

      (1) The breakdown shall correspond to the phases or items indicated in the schedule showing separate amounts for labor, materials and equipment necessary to complete the work, including quantities and unit prices as requested by the Contract Administrator.

(2) Mobilization, preparatory work, overhead and profit shall be included in each of the several items to which they are applicable and will not be stated as separate items. The cost of bonds, however, should be stated in a separate line item.

(3) The Contract Administrator shall have the right to revise the schedule of values submitted, prior to his or her approval, if, in his or her opinion the items indicated do not conform to their true value. The breakdown shall be revised at the same time revisions become necessary in the schedule.

c) Subcontracts

(1) The Contractor shall submit the names of all subcontracts involving on-site labor, together with a summary of the extent, character, and dollar amount of the work to be done by each subcontractor. Upon request, the Contractor shall also furnish the Contract Administrator with copies of all subcontracts for performance of the work under this Contract.

(2) Immediately after issuance of the Notice to Proceed, and any time thereafter the Contract Administrator may request submittal of purchase orders or subcontracts for materials or equipment (including those issued by subcontractors) with priority ratings extended when applicable. The submittal to the Contract Administrator shall be made immediately after the Contractor has received confirmation of the various items. The promised date(s) of shipment, point(s) of delivery, quantity and name of items to be furnished and unit prices will be clearly indicated. The date each purchase order or subcontract is placed will be furnished to the Contract Administrator.

d) Changes Affecting Delivery

The Contractor shall notify the Contract Administrator immediately of any changes or circumstances which would affect timely delivery of any item.

e) Basis For Payment

(1) Progress payments shall be computed on a basis of the percentage of completion of the work in place, multiplied by the lump-sum Contract price,

the percentage of completion representing the ratio of the value of that portion of the work completed to the total price, as determined by the application of prices shown in the approved schedule of values.

(2) No payment(s) will be made to the Contractor until a schedule of values and schedule revised to reflect all changes in Contract work have been submitted to and approved by the Contract Administrator.

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OR

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SP-23B, Contract Schedules

A. Within 10 (ten) days of the Notice to Proceed, submit a Contract schedule to the Contract Administrator. The schedule shall consist of at least a time-scaled bar chart showing continuous flow from left to right. Durations and specific calendar dates shall be clearly and legibly shown for the start and finish of each work activity. Extension of any schedule beyond the Contract time shall not be acceptable. Schedules showing the work completed in less than the Contract time may be acceptable if judged by the Contract Administrator to be practical. However, acceptance of such a schedule by the Contract Administrator shall not change the Contract time. The Contract time, not the Contract schedule shall control in the determination of liquidated damages payable by the Contractor and in the determination of delay. If a schedule showing the work completed in less than the Contract time is accepted, the Contractor shall not be entitled to extensions of the Contract time or to adjustments of the Contract amount for delays until such delays extend the completion of the work beyond the expiration of the Contract time.

B. The Contract schedule shall be in sufficient detail to demonstrate preliminary planning for the Work and to represent a practical plan to complete the Work within the Contract time. It shall include but shall not be limited to:

1. A legend of scheduled activities.

2. Scheduled work activities which clearly indicate the scope of work to be completed.

3. Major milestones which are critical to the completion of the work, including but not limited to the following:

4.

a) Mobilization;

b) Submittal preparation by the Contractor and review and approval by the University representative, including Shop Drawings, technical manuals, and all other submittals and resubmittals as required;

c) Order, manufacture, fabrication, delivery, installation, and check out of long lead and major construction material and major construction material and major equipment;

d) Off-Site Improvements

e) Earthwork

f) Excavation

g) Foundation

h) Structural
   (1) Framing
   (2) Elevator superstructure/supports

i) Rough-Outs
   (1) Mechanical
   (2) Electrical
   (3) HVAC

j) Exterior Finishes
   (1) Walls/finish
   (2) Roof

k) Trimming
   (1) Plumbing
   (2) Electrical
   (3) HVAC
   (4) Elevator motors

l) Elevator cabs

m) Interior Drywall/Plaster

n) Interior Finishes
   (1) Painting
   (2) Flooring
   (3) Finish carpentry
   (4) Hardware

o) On-Site
   (1) Curbs
   (2) Gutters
   (3) Asphalt

p) Landscaping

q) Final Inspection

r) Punch list

s) Additional item as appropriate

4. A plot of the Contract schedule with a clearly highlighted critical path.

5. Identification of all holidays and non-working days.

C. Acceptance of the Contract schedule will be a condition precedent to the making of any progress payment for work performed beyond sixty (60) days from receipt of the Notice to Proceed.

D. The Contractor shall meet with the Contract Administrator each month to review actual progress made to date, activities started and completed to date, and the percentage of work completed to date on each activity started but not completed. Upon completion of the joint review, the Contractor shall prepare the updated Baseline Schedule and submit it to the Contract Administrator.

The updated Baseline Schedule shall incorporate all changes mutually agreed upon by the Contractor and University during preceding periodic reviews and all changes resulting from approved Change Orders and Contract Modifications.

Monthly updating and reports shall be an integral part, and basic element of the estimate upon which progress payments will be made. Submittal, review and approval by the Contract

Administrator of these items shall be a condition precedent to the making of progress payments. If, in the judgment of the Contract Administrator, the Contractor fails or refuses to provide a complete updated schedule or reports, as specified, the Contractor will be deemed to have not provided the required estimate upon which progress payments may be made, and shall not be entitled to such progress payments unless or until it has furnished the aforesaid schedules.

Any request for an adjustment of the Contract time for completion submitted by the Contractor for changes or alleged delays shall be accompanied by a complete Time Impact Analysis, which shall be submitted for review within twenty (20) days after the request by the Contractor. Time extensions will not be granted unless substantiated by the Critical Path Method (CPM) Schedule, and then not until the CPM project contingency becomes zero.

Each Time Impact Analysis shall provide information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. The Time Impact Analysis shall be determined on the basis of the date or dates when the change or changes were issued, or the date or dates when the alleged delay or delays began. The status of the construction project and Time Impact Analysis shall include event time computations for all affected activities.

The Contract Administrator may require that Time Impact Analysis be provided in order to demonstrate the time impact upon the overall project and the time for completion, at no additional cost to the University.

If the Contract Administrator finds after review of the Time Impact Analysis that the Contractor is entitled to any extension of time for completion, the time for completion will be adjusted accordingly by the Contract Administrator, and the Contractor shall the revise the Baseline Schedule accordingly.

The accepted updated Baseline Schedule will be used in the calculation of liquidated damages or compensable delay for each day of delay after the Contract completion date, as adjusted, until the work is accepted.

E. Breakdown of Bid. Within fifteen (15) calendar days after receipt of Notice to Proceed and prior to payment of any invoices by the University, the Contractor shall submit a bid breakdown (in the form, detail and number prescribed by the Contract Administrator) totaling the Contract price, to the Contract Administrator for approval.

1. The breakdown shall correspond to the phases or items indicated in the schedule showing separate amounts for labor, materials and equipment necessary to complete the work, including quantities and unit prices as requested by the Contract Administrator.

2. Mobilization, preparatory work, overhead and profit shall be included in each of the several items to which they are applicable and will not be stated as separate items. The cost of bonds, however, should be stated in a separate line item.
3. The Contract Administrator shall have the right to revise the schedule of values submitted, prior to his or her approval, if, in his or her opinion the items indicated do not conform to their true value. The breakdown shall be revised at the same time revisions become necessary in the schedule.

F. Subcontracts

1. The Contractor shall submit the names of all subcontracts involving on-site labor, together with a summary of the extent, character, and dollar amount of the work to be done by each subcontractor. Upon request, the Contractor shall also furnish the Contract Administrator with copies of all subcontracts for performance of the work under this Contract.

2. Immediately after issuance of the Notice to Proceed, and any time thereafter the Contract Administrator may request submittal of purchase orders or subcontracts for materials or equipment (including those issued by subcontractors) with priority ratings extended when applicable. The submittal to the Contract Administrator shall be made immediately after the Contractor has received confirmation of the various items. The promised date(s) of shipment, point(s) of delivery, quantity and name of items to be furnished and unit prices will be clearly indicated. The date each purchase order or subcontract is placed will be furnished to the Contract Administrator.

G. Changes Affecting Delivery

The Contractor shall notify the Contract Administrator immediately of any changes or circumstances which would affect timely delivery of any item.

H. Basis for Payment

1. Progress payments shall be computed on a basis of the percentage of completion of the work in place, multiplied by the lump-sum Contract price, the percentage of completion representing the ratio of the value of that portion of the work completed to the total

price, as determined by the application of prices shown in the approved schedule of values.

2. No payment(s) will be made to the Contractor until a schedule of values and schedule revised to reflect all changes in Contract work have been submitted to and approved by the Contract Administrator.

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OR

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SP-23C, Contract Schedules

A. Description

1. The Contractor shall develop a network plan and schedule for the project demonstrating complete fulfillment of all Contract requirements, shall keep the network plans up to date in accordance with the requirements of this section and shall utilize the Critical Path Method (CPM) in planning, coordinating, performing and reporting the work under this Contract, including all activities of subcontractors, equipment vendors, and suppliers, and in assisting the University Contract Administrator and Contract Administrator's Engineering Representative in monitoring the progress of the work.

2. The time scaled Activity-on-arrow Diagramming Method (ADM) or the Precedence Diagramming Method (PDM) shall be utilized in preparing the CPM Schedule network diagrams.

3. The principles and definition of CPM in terms used herein shall be as follows:

CPM network: a graphic description of the construction plan, showing the sequential steps needed to reach the completion of the work. It shall depict events and jobs, and their interrelationships, and shall recognize the progress that must be made in one task before subsequent tasks can begin. It shall be comprehensive and shall include all interdependencies and interactions required to perform the work of the Project.

B. Submittals

1. Within ten (10) days following receipt of Notice of Award of the Contract, and prior to engaging a consultant or commencing performance of the work specified in this

Provision with its own forces, the Contractor shall submit to the Contract Administrator for approval:

a) The name and the address of the proposed consultant.

b) Information sufficient to show that the proposed consultant or the Contractor's own organization has staff and computer facilities meeting the requirements herein.

c) A list of prior projects for which the proposed consultant or the Contractor's own organization or staff thereof has performed services similar to those required for this Contract.

2. Within ten calendar days of the Notice to Proceed, submit a Preliminary Contract Schedule.

3. Within 30 days of acceptance of the Preliminary Contract Schedule, submit a Detailed Contract Schedule.

4. Before final acceptance, submit a final As-Built Schedule.

5. Submit all other required reports referenced herein when required by this Provision.

6. Submit one (1) reproducible and six (6) blue-line prints of each required schedule and report, including required revisions thereof. The Contractor shall also submit a copy of the computer data disks used to produce hard copy submittals. Computer disks shall be 3 ½ inch high density in MS-DOS readable format.

7. Submit the monthly updated Contract Schedules (hereinafter "Baseline Schedules") and reports referenced herein concurrently in a single package.

C. Breakdown of Bid. Within fifteen (15) calendar days after receipt of Notice to Proceed and prior to payment of any invoices by the University, the Contractor shall submit a bid breakdown (in the form, detail and number prescribed by the Contract Administrator), totaling the Contract price, to the Contract Administrator for approval.

1. The breakdown shall correspond to the phases or items indicated in the progress schedule showing separate amounts for labor, materials and equipment necessary to complete the work, including quantities and unit prices as requested by the Contract Administrator.

2. Mobilization, preparatory work, overhead and profit shall be included in each of the several items to which they are applicable and will not be stated as separate items. The cost of bonds, however, should be stated in a separate line item.

3. The Contract Administrator shall have the right to revise the schedule of values submitted, prior to his/her approval, if, in his/her opinion the items indicated do not conform to their true value. The breakdown shall be revised at the same time revisions become necessary in the progress schedule.

D. Subcontracts

1. The Contractor shall submit the names of all subcontracts involving on-site labor, together with a summary of the extent, character, and dollar amount of the work to be done by each subcontractor. Upon request, the Contractor shall also furnish the Contract Administrator with copies of all subcontracts for performance of the work under this Contract.

2. Immediately after issuance of the Notice to Proceed, and any time thereafter the Contract Administrator may request submittal of purchase orders or subcontracts for materials or equipment (including those issued by subcontractors) with priority ratings extended when applicable. The submittal to the Contract Administrator shall be made immediately after the Contractor has received confirmation of the various items. The promised date(s) of shipment, point(s) of delivery, quantity and name of items to be furnished and unit prices will be clearly indicated. The date each purchase order or subcontract is placed will be furnished to the Contract Administrator.

E. Changes Affecting Delivery

The Contractor shall notify the Contract Administrator immediately of any changes or circumstances which would affect timely delivery of any item.

F. Basis For Payment

1. Progress payments shall be computed on a basis of the percentage of completion of the work in place, multiplied by the lump-sum Contract price, the percentage of completion representing the ratio of the value of that portion of the work completed to the total price, as determined by the application of prices shown in the approved schedule of values.

2. No payment(s) will be made to the Contractor until a schedule of values and progress schedule revised to reflect all changes in Contract work have been submitted to and approved by the Contract Administrator.

G. Approvals

1. Acceptance of the Detailed Contract Schedule will be a condition precedent to the making of any progress payment for work performed beyond sixty (60) days from receipt of the Notice to Proceed.

2. Monthly updating including all particulars, including labor, resources and cost loading of the Baseline Schedule and reports shall be an integral part, and basic element of the estimate upon which progress payments will be made. Submittal, review and approval by the Contract Administrator of these items shall be a condition precedent to the making of progress payments. If, in the judgment of the Contract Administrator, the Contractor fails or refuses to provide a complete updated Baseline Schedule or reports, as specified, the Contractor will be deemed to have not provided the required estimate upon which progress payments may be made, and shall not be entitled to such progress payments unless or until it has furnished the aforesaid schedules.

H. Construction Analysis

The Contractor shall use a computerized critical path scheduling system capable of producing computer generated reports with the following minimum information:

1. Activity identification code keyed to Summary and Detailed Contract Schedule activities;
2. Activity description;
3. Status date and remaining duration;
4. Activity percentage complete;
5. Activity duration;
6. Early start/finish and late start/finish;
7. Total float;
8. Free float;
9. The predecessor and successor activities for each individual activity;
10. A comparison between the current update and the baseline schedule;
11. Designation of the planned work day/work week for each activity;
12. A critical item list of activities with ten (10) working days or less total float;
13. Scheduled and actual labor loading for each activity;
14. Scheduled and actual resource loading for each activity; and

15. Scheduled and actual cost loading for each activity.

I. Quality Assurance

To assist in the preparation and for the production of the required submittal of Schedules and Reports outlined in this Provision, the Contractor shall engage, at its own expense, a CPM consultant having the following qualifications, except that the Contractor may perform these services with its own organization if the Contractor itself has such qualifications:

1. Have a staff of two (2) or more employees regularly engaged and skilled in the application of CPM to similar or larger size construction projects.

2. Possess or have access to a library of computer programs for preparation and production of schedules and reports.

3. Have computer facilities or access on short notice to computer facilities with the capability of delivering a printout within 48-hours.

4. Use a software program compatible with Microsoft Project without need for the University to perform conversion. Microsoft Project or Primeval (with conversion capabilities to Microsoft Project performed by the Contractor), or equal shall be used.

J. Contract Deliverables

1. Preliminary Contract Schedule

a) Submission

(1) Within ten calendar days of Notice to Proceed, submit a preliminary Contract Schedule.

(2) Any revisions deemed necessary by the Contract Administrator as a result of its review shall be re-submitted to the Contract Administrator for review within six (6) days after the Contractor's receipt of the Preliminary Contract Schedule from the Contract Administrator.

(3) Two (2) week Look-Ahead Schedule.

b) Form

(1) Prepare the Preliminary Contract Schedule as a time-scaled bar chart showing continuous flow from left to right. Durations and specific calendar dates shall be clearly and legibly shown for the start and finish of each work activity.

(2) Prepare the Preliminary Contract Schedule in sufficient detail to demonstrate preliminary planning for the work and to represent a practical plan to complete the work within the Contract time.

c) The Preliminary Contract Schedule shall include, but not be limited to

(1) A legend of scheduled activities.

(2) Scheduled work activities which clearly indicate the scope of work to be completed.

(3) Major milestones which are critical to the completion of the work, including but not limited to the following:

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<u>NOTE TO CA:</u> Get With CPL And Edit Accordingly

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(a) Off-Site Improvements
(b) Earthwork
(c) Excavation
(d) Foundation
(e) Structural
  (i) Framing
  (ii) Elevator superstructure/supports
(f) Rough-Outs
  (i) Mechanical
  (ii) Electrical
  (iii) HVAC
(g) Exterior Finishes
  (i) Walls/finish
  (ii) Roof
(h) Trimming
  (i) Plumbing
  (ii) Electrical
  (iii) HVAC

(iv) Elevator motors
(i) Elevator cabs
(j) Interior Drywall/Plaster
(k) Interior Finishes
(i) Painting
(ii) Flooring
(iii) Finish carpentry
(iv) Hardware
(l) On-Site
(i) Curbs
(ii) Gutters
(iii) Asphalt
(m) Landscaping
(n) Final Inspection
(o) Punch list
(p) Additional item as appropriate

d) A plot of the Preliminary Contract Schedule with a clearly highlighted critical path.

e) Identification of all holidays and non-working days.

2. Detailed Contract Schedule

a) The Contractor shall submit to the Contract Administrator for review and approval a Detailed Contract Schedule no later than thirty-five (35) calendar days after Notice to Proceed, but in such time to allow for review and approval in the first sixty (60) days after Notice to Proceed. The Detailed Contract Schedule shall be a computerized detailed task level CPM diagram in a time-scaled Activity-on-arrow Diagramming Method (ADM), or a Precedence Diagramming Method (PDM) format. A clear delineation of construction activities shall be shown on the Detailed Contract Schedule. This schedule shall be labor, resource, and cost loaded.

(1) The Contractor shall participate in a review of the proposed Detailed Contract Schedule by the Contract Administrator when requested to do so. Any revisions deemed necessary by the Contract Administrator as a result of this joint review shall be re-submitted within seven (7) days after said meeting.

b) All activities in the Detailed Contract Schedule shall be grouped to enable "roll up" of the activities in the form of a Summary Schedule. The Summary Schedule shall be submitted monthly with the Updated Detailed Contract Schedule. A clear delineation of construction activities shall be shown on the Summary Schedule. This schedule shall be labor, resource, and cost loaded.

c) The work activities comprising the Detailed Contract Schedule shall be of sufficient detail to ensure adequate planning and execution of the work and such that the schedules provide an appropriate basis for monitoring and evaluating the progress of the work. A work activity is defined as an activity which requires time and resources (labor, equipment, and/or material) to complete in a continuous operation. No activity shall be less than one (1) nor more than fourteen (14) days in duration for any on-site operation. All holidays and non-working days shall also be identified.

d) Failure by the Contractor to include any element of the work required for the performance of this Contract and completion of the Project shall not excuse the Contractor from completing all work required within the time for completion, notwithstanding Contract Administrator acceptance of the Detailed Contract Schedule.

********** **NOTE TO CA:** **This Percentage May Need to be Adjusted** **********

e) No more than 20% of the total number of activities shown on the schedule shall be critical or near critical. Near critical is defined as float less than ten (10) days.

********* **NOTE TO CA:** **CA and CPL to Modify This Paragraph (List) as Needed******

f) These schedules shall indicate the sequence and interdependency of work activities. They shall include, but not be limited to, the following items:

(1) Mobilization;
(2) Submittal preparation by the Contractor and review and approval by the University representative, including Shop Drawings, technical manuals, and all other submittals and resubmittals as required;
(3) Order, manufacture, fabrication, delivery, installation, and check out of long lead and major construction material and major construction material and major equipment;
(4) Installation of dewatering system(s);
(5) Excavation, backfill, grading, paving;

(6) Concrete placement sequence;
(7) Concrete block placement;
(8) Waterproofing;
(9) Building framing;
(10) Structural framing, miscellaneous metal, masonry, equipment installation;
(11) Roofing;
(12) Glass;
(13) Elevators;
(14) Plumbing;
(15) H.V.A.C.;
(16) Electrical;
(17) Interior finishes (shall be detailed);
(18) Delivery and installation of casework, etc.;
(19) Fire sprinklers;
(20) Fire alarm;
(21) Security system;
(22) All other major construction activities;
(23) Subcontractor's work activities;
(24) All utility interfaces required within the scope of work;
(25) Landscape/Irrigation;
(26) Performance and acceptance tests and supervisory service activities;
(27) All interfaces with work performed by other contractors;
(28) Punch-out and acceptance of all facilities;
(29) Delivery, installation, and check out of the Government-furnished equipment and material;
(30) All Contract-stipulated milestone dates, Contract performance period, partial acceptance dates if any are specified, and final completion date;
(31) Final cleanup;
(32) Allowance for University move-in; and
(33) Each approved Change Order and Field Order shall be listed and plotted as a separate and independent activity or activities as appropriate.

The above schedule components shall be organized into logical groupings by location, responsibility, Specification sections, etc.

g) A combined two (2) week Look-Ahead Schedule with a two (2) week As-Built Schedule for previous two weeks (derived from the Baseline Schedule) shall be submitted by the Contractor to the Contract Administrator for review and approval at each weekly progress meeting.

h) Critical Work activities are defined as work activities which, if delayed or extended, will delay the scheduled completion of the work, or both. All other work activities are defined as non-critical work activities and are considered to have float.

i) Float is defined as the time that a non-critical work activity can be delayed or extended without delaying the scheduled completion of milestones specified in this provision or the scheduled completion of the work, or both. Float or slack time is not for the exclusive use or benefit of either the University or the Contractor. Neither the Contractor nor the University shall have an exclusive right to the use of float. Document the effect on the updated Contract Schedule whenever float has been used.

j) The Contractor shall not sequester float through strategies including extending activity duration estimates to consume available float, using preferential logic, using extensive or insufficient crew/resource loading, use of float suppression techniques, special lead/lag logic restraints or imposed dates. Use of float time disclosed or implied by the use of alternate float suppression techniques shall be shared, and be to the benefit of both the University and the Contractor.

k) It is acknowledged that University caused time savings (i.e., critical path submittal reviews returned in less time than allowed by the Contract documents, approval of substitution requests which result in a savings of time or the Contractor, etc.) create shared float.

l) A schedule showing the work completed in less than the Contract time, which is found to be practical by the Contract Administrator, shall be acceptable only if the Contractor and the University execute a binding Contract modification revising the Contract completion date to that shown on the proposed schedule. A schedule extending beyond the Contract time will not be acceptable.

m) Once approved by the Contract Administrator, the Contractor's Detailed Contract Schedule shall be known as the Baseline Schedule and shall be used by the Contractor for executing the work of the Contract including planning, organizing and directing the work, and reporting its progress until subsequently revised.

3. <u>Baseline Schedule Updating and Progress Payments</u>

a) The Baseline Schedule, shall be updated in all particulars, including labor, resource and cost loading on a monthly basis (or at lesser intervals if deemed necessary by

the Contract Administrator without additional cost to the University for reasons such as work activities being fourteen (14) days or more behind schedule) for the purpose of recording and monitoring the progress of the work. The Contractor shall meet with the Contract Administrator each month to review actual progress made to date, activities started and completed to date, and the percentage of work completed to date on each activity started but not completed. Upon completion of the joint review, the Contractor shall prepare the updated Baseline Schedule and submit it to the Contract Administrator.

b) The updated Baseline Schedule shall incorporate all changes mutually agreed upon by the Contractor and University during preceding periodic reviews and all changes resulting from approved Change Orders and Contract Modifications.

c) Acceptance of the Updated Baseline Schedule will be a condition precedent to the making of any progress payments for work performed.

4. Reports

a) Variance: A variance Report shall be submitted monthly comparing the approved Baseline and the Updated Baseline Schedules.

(1) The Report shall include a description of all activities completed during the preceding month, a description of progress made and planned for activities listed as started but not completed on the updated Contract Baseline Schedule, and shall report non-critical activities which have been delayed ten (10) or more working days and critical (eight (8) days or less total float) activities which have incurred any delay. The format of this Report shall include:

(a) Activity code and description;
(b) Baseline scheduled early start/finish dates;
(c) Current anticipated early start/finish dates;
(d) Working days remaining to complete the activity;
(e) Percentage complete of the activity;
(f) Total float of the activity; and
(g) Corrective Action Plan to complete work within the Contract time period.

b) Progress Curves. The Contractor shall submit the first Progress Curves Report within thirty-five (35) days after Notice to Proceed. The curves shall show the cumulative schedule percent complete, time-scaled in calendar days from Notice to Proceed to the Detailed Contract Schedule completion date. The curves shall be derived from the Cash Flow Curve.

The Progress Curves shall be updated monthly showing actual progress. They shall be submitted to the Contract Administrator with each monthly progress payment request. The updated curves shall include scheduled, actual and forecasted progress plotted as a time-scaled curve from 0 to 100 percent. The scheduled, actual, and forecasted progress shall be derived from the Cash Flow Curve.

c) Equipment Schedule

(1) The Contractor shall submit within thirty-five (35) days after Notice to Proceed a schedule showing dates when key construction equipment will be brought to the Project site in order to accomplish the work in accordance with the Detailed Contract Schedule. This schedule shall list the quantity of equipment by type and capacity (excluding small tools) in a bar chart form.

(2) The Equipment Schedule shall be updated monthly showing actual equipment on-site at time of reporting period and forecasted equipment requirements necessary to achieve the Contract Baseline Schedule.

d) Material Status

(1) The Contractor shall submit within thirty-five (35) days after Notice to Proceed a Material Status report showing the planned delivery of long-lead and major construction materials, by activity, that are required to maintain the Detailed Contract Schedule. Items in this report shall include:

(a) Activity and description of the type of material;
(b) Total quantity required;
(c) Required delivery schedule; and
(d) Scheduled order date.

(2) The Material Status Report shall be updated and resubmitted monthly showing:

(a) Actual order date;
(b) Scheduled delivery date to site;
(c) Actual delivery to site, date, and quantity;
(d) Total quantity delivered to site to date;
(e) Remaining quantity to be delivered; and
(f) Estimated delivery date of remaining materials.

e) Cash Flow Curve

(1) The Contractor shall submit within thirty-five (35) days after Notice to Proceed a Cash Flow Curve of expected progress payments over the time of the Project. The curve shall be plotted against the Detailed Contract Schedule using Contractual bid item amounts.

(2) The Contractor shall update the curve with actuals from the approved progress payments and forecasted progress payments and submit it to the Contract Administrator monthly. The total of approved progress payments and forecasted progress payments shall be equal to Contractual bid amounts plus approved Contract modifications. The updated curve shall be plotted against the Baseline Schedule.

f) Labor

(1) The Contractor shall submit, within thirty-five (35) days after Notice to Proceed, a Labor Curve of the labor requirements per calendar week over the time of the Project. The curve shall be plotted against the Detailed Contract Schedule. The curve shall show the number of persons in each craft for each week.

(2) The Contractor shall update the curve with the actual labor employed and forecasted labor requirements necessary to achieve the Baseline Schedule and submit it to the Contract Administrator monthly. The updated curve shall be plotted against the Baseline Schedule.

g) Submittal Schedule

(1) The Contractor, within thirty-five (35) calendar days after Notice to Proceed, shall prepare and submit to the Contract Administrator a comprehensive Submittal Schedule which will maintain the Detailed Contract

Schedule. The Contractor shall identify on the Submittal Schedule all of the submittal items required by the Contract documents governing the work, listing Shop Drawings and product data or literature separately. The Contractor shall indicate for each submittal item on the Submittal Schedule.

(a) The date by which that item will be submitted to the Contract Administrator.
(b) Whether the submittal is for review, substitution, or for record only.
(c) The date by which response by the Contract Administrator is required.
(d) The date by which the material or equipment must be on the site in order not to delay the progress of the work.

(2) In preparing the Submittal Schedule, the Contractor shall consider the nature and complexity of each submittal item and shall allow ample time for review, revision or correction.

(3) The Submittal Schedule shall be updated monthly showing actual submittal status at the time of reporting period and forecasted submittal requirements necessary to achieve the Contract Baseline Schedule.

(4) The Contract Administrator will review the Contractor's updated Submittal Schedule to determine its completeness and compatibility with the Baseline Schedule. A Submittal Schedule which is incompatible with the Detailed Contract or Baseline Schedule or which creates an unreasonable labor demand on the University for review of said submittals will be sufficient reason(s) to reject the Submittal Schedule.

g) Submittal of the monthly reports and Schedule Updates by the Contractor are required regardless of the approval status of the Contract Baseline Schedule.

K. Responsibility For Completion

The Contractor agrees that at the sole judgment of the Contract Administrator, whenever it becomes apparent from the current monthly updated Contract Baseline Schedule that the Contract completion date will not be met, it will take some or all of the following actions, as approved by the Contract Administrator, at no additional cost to the University:

1. Increase construction labor in such quantities and crafts as will substantially eliminate, in the judgment of the Contract Administrator, the backlog of work.

2. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment, or any combination of the foregoing, sufficiently to substantially eliminate, in the judgment of the Contract Administrator, the backlog of work. This paragraph shall not be construed to permit Contractor to violate the work hour restrictions specified in the Contract document.

3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.

L. Adjustment of Times for Completion

1. In addition to the General Provisions, the time for completion of the work will be adjusted in accordance with these procedures.

2. Any request for an adjustment of the Contract Time for completion submitted by the Contractor for changes or alleged delays shall be accompanied by a complete Time Impact Analysis, which shall be submitted for review within twenty (20) days after the request by the Contractor. Time extensions will not be granted unless substantiated by the CPM Schedule, and then not until the CPM project contingency becomes zero.

3. Each Time Impact Analysis shall provide information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. Each Time Impact Analysis shall be in form and content acceptable to the Contract Administrator, and shall include, but not be limited to, the following:

   a) A fragmentary CPM type network (Fragnet) illustrating how the Contractor proposes to incorporate the change or alleged delay into the current updated Baseline Schedule; and

   b) Identification of activities in the current updated Baseline Schedule which are proposed to be amended due to the change or alleged delay, together with engineering estimates and other appropriate data justifying the proposal.

4. The Time Impact Analysis shall be determined on the basis of the date or dates when the change or changes were issued, or the date or dates when the alleged delay or delays began. The status of the construction project and Time Impact Analysis shall include event time computations for all affected activities.

5. The Contract Administrator may require that Time Impact Analysis be provided in order to demonstrate the time impact upon the overall project and the time for completion, at no additional cost to the University.

6. If the Contract Administrator finds after review of the Time Impact Analysis that the Contractor is entitled to any extension of time for completion, the time for completion will be adjusted accordingly by the Contract Administrator, and the Contractor shall the revise the Baseline Schedule accordingly.

7. The accepted updated Baseline Schedule will be used in the calculation of liquidated damages or Compensable Delay for each day of delay after the Contract completion date, as adjusted, until the work is accepted.

M. Final As-Built Schedule

As a condition precedent to final acceptance of the Project, submit a final As-Built Construction Schedule and all final reports which accurately reflect the manner in which the Project was constructed and include actual start and completion dates for all work activities on the Baseline Schedule.

SP-24, Payment Due Dates, Inspection Period, and Invoices

A. The University will make all efforts to make payments within thirty (30) calendar days after the date of actual receipt to the University designated office of a proper invoice or other required information.

B. The University agrees to inspect and determine the acceptability of the Contract work within fifteen (15) calendar days after the date of completion of the work.

C. The Contractor shall submit one (1) original of all invoices to:

University of California
Los Alamos National Laboratory
Financial Management Operations, Mail Stop P240
P. O. Box 1663
Los Alamos, NM 87545

SP-25, Stockpile and Work Areas
(*See* General Provision entitled *Operations and Storage Areas*.)

A. Warehouse, shop and office facilities and stockpile areas shall be provided by the Contractor at its own expense. The University may make available Government premises for use by the Contractor without cost whenever such use will not interfere with other operations. The following provisions will govern the Contractor's use of such premises:

1. All operations of the Contractor, including storage of construction materials and equipment, on Government property shall be limited to those purposes and confined to those areas authorized and approved by the Contract Administrator or other provisions of this Contract.

2. Only construction materials and equipment to be used for the performance of this Contract work may be stored in the designated areas. If the Contractor abandons the performance of this Contract work or if the Contractor's right to proceed is terminated pursuant to the General Provision entitled *Default-Fixed-Price Construction* the Contractor shall hold and save the University and its employees, officers and agents free and harmless from any liability of any kind arising from the University's taking possession of such construction materials and equipment for completion of this Contractor work.

3. Except as otherwise provided in this Contract or by direction of the Contract Administrator, the Contractor may erect structures, install utilities, and establish storage areas as may be necessary to prosecute the Contract work in locations designated for those purposes. All such structures and facilities shall remain the property of the Contractor and, unless otherwise authorized by the Contract Administrator, shall be removed from the premises at the Contractor's expense upon completion of the work or when directed by the Contract Administrator. In either case, the Contractor shall have removed all such structures and facilities and vacated the premises, leaving the premises in a condition satisfactory to the Contract Administrator prior to final acceptance of the Contract work.

4. The Contractor shall be responsible for preparing the site for use, arranging for trash or garbage collection and providing utilities or services which may be necessary in connection with the Contractor's use of the premises. The Contractor shall maintain the premises, all facilities and structures on the premises, whether or not constructed by the Contractor, and all areas identified for access to the premises in a safe, sanitary and attractive condition. The Contractor shall not make or allow any abuse or destruction of the premises including the disturbance or destruction of trees. The Contractor shall not permit any person, whether or not in the Contractor's or its subcontractors' employ, to be housed on the premises.

B. The Contractor shall provide and maintain during the entire period covered by this Contract a weather-tight bulletin board approximately 3' high by 5' long. It shall be mounted in a conspicuous place, as approved by the Contract Administrator, accessible to all employees of the Contractor and subcontractors. The bulletin board will remain the property of the Contractor. All University posters or notices, the Contract Davis-Bacon wage rate decision, Contractor safety programs, and any publications of interest to workers shall be displayed.

SP-26, Utilities

A. For utilities to be used by the Contractor in performance of the construction work:

1. Supplying of Water, Gas and Electricity

The following utilities and connect/disconnect services shall be furnished by the University to the Contractor without charge:

[*List Free Utilities*]

a) Approved Locations - Connections of such utilities shall be made only at locations approved by the University and only when Contractor's facilities have the approval of the University.

b) Right to Withdrawal - The University, in its sole discretion, reserves the right to withdraw the furnishing of any or all such utilities. In such event, the Contractor shall furnish its own utilities as it requires, and the University shall make such equitable adjustments as is appropriate under the General Provision entitled *Changes*.

2. Temporary Lighting, Heating, Ventilation and Telephone

The Contractor shall

a) Furnish and maintain adequate equipment, approved by the Contract Administrator, for temporary lighting, heating and ventilation, as required in all areas during all processes of work;

b) Maintain minimum temperatures as may be specified in the Specifications and the manufacturer's recommendations;

c) Maintain lighting and ventilation at levels high enough to afford safety to personnel and to provide suitable environment;

d) Furnish and maintain, at Contractor's own expense, all telephones required by the Contractor.

3. Tie-ins and Disconnects

For utilities to be installed by the Contractor

a) Unless otherwise explicitly specified in the Specifications or Drawings, the University will make all tie-ins and disconnects to the existing utilities of the University, all at no charge to the Contractor.

b) Tie-in Preparations - No work shall be started on a tie-in until the Contractor has performed all necessary excavations and all work required to expose and prepare the area for the tie-in. All materials required for the tie-in shall be provided by the Contractor and shall be on-site before the tie-in begins.

c) Tie-ins to interior systems or exterior system not described above shall be performed in accordance with requirements in the Specifications or Drawings of this Contract. The Contractor shall include in the total Contract price, all costs, including premium time costs, required to comply with the foregoing requirements. The foregoing applies to all temporary tie-ins as well as those tie-ins required as part of the construction projects.

d) Ten-Days Notice - At least ten (10) working days in advance, the Contractor shall notify the Contract Administrator of the need for connection services. The University will perform disconnect services upon notification.

e) Completion of Tie-in - Upon completion of the tie-in or when directed by the Contract Administrator, the Contractor will backfill the excavation and replace or relocate and install as directed, all presently existing safety, security, utility and similar markers and signs affected by construction. All damaged signs shall be replaced by the University at the Contractor's expense.

SP-27, Salvage, Recycling or Disposal of Waste Materials

A. Salvaged materials, if any, shall be handled as provided in various sections of the Specifications of the Contract.

B. The Contractor shall be responsible for the removal and disposal of all scrap and waste materials at no additional cost to the University. Waste material includes brush, trees, rock, dirt, abandoned and removed concrete structures or broken concrete, removed building components, removed piping and other utilities, all other removed materials not specified as salvaged materials in various sections of the Specifications of the Contract, and all surplus and waste materials brought to the site by the Contractor. All waste materials generated from construction activities by the Contractor shall be hauled to and disposed of at areas as may be designated by the Contract Administrator. In compliance with the Resource Conservation and Recovery Act, the Contractor is encouraged to find alternative uses for waste materials such as remanufacture into recycled products, or reuse for other legal non-waste purposes. Construction waste not delivered to the Laboratory at a site for disposal, or reused or recycled by the Contractor shall be delivered to Los Alamos County Sanitary Landfill, or disposed of by the Contractor in any lawful manner. A fee may be charged by the County for landfill disposal. Any salvage value from recycling or reuse of waste materials shall be considered to be included in the Contract price. All materials removed from the site are to be handled and disposed of in accordance with DOE Orders, Laboratory requirements, local, state and Federal regulations. The Contractor shall provide to the Contract Administrator's Engineering Representative a weekly truck activity report for every load hauled. This report shall provide the following information:

1. Pick-up location
2. Approximate weight
3. Type material
4. Where dumped
5. Recycling or alternative uses
6. Date of pick-up and delivery

C. Burning of waste material is not permitted.

SP-28, Testing

A. Unless specifically stated to the contrary in the Specifications of the Contract, all testing shall be performed and paid for by the Contractor. All such tests shall be made in the presence of the Contract Administrator. The Contractor shall notify the Contractor Administrator a minimum of 48 hours in advance of all testing. Should the Contract Administrator waive this right the Contractor shall provide three (3) certified copies of the test results upon completion

of the tests made and the results thereof shall be furnished to the Contract Administrator as soon as possible after the tests are made.

B. Tests to be performed at the University's expense will be performed by the University or an independent testing organization of the University's choice. If initial tests reveal that Contract requirements have not been met, additional testing shall be performed at the Contractor's expense after equipment and facilities have been brought into compliance.

C. The Contractor shall cooperate fully with the University and its testing organization. The Contractor shall provide personnel and special equipment to provide adjustments and start-up for the University selected organization.

D. In addition to the foregoing, the Contractor shall perform any additional inspections and testing necessary to insure quality control of the work.

SP-29, Insurance Requirements
(*See* General Provision entitled *Insurance-Work on a Government Installation*.)

The Certificate of Insurance submitted to the University must name The Regents of the University of California and the U.S. Department of Energy as additional insured and include a "Waiver of Subrogation" in favor of The Regents of the University of California and the U.S. Department of Energy.

The following types of insurance, with coverage of not less than the minimum stated, are required:

Type	Minimum Coverage
Worker's Compensation & Occupational Disease	Adequate to comply with applicable Federal and State law
Employer's Liability	Adequate to comply with applicable Federal and State law, but no less than $100,000
General Liability	
Bodily Injury-comprehensive form	$500,000 per occurrence
Injury Liability	$200,000 per person
Automotive Liability, Comprehensive form	
Property damage	$100,000 per occurrence, minimum

Bodily injury	$500,000 per occurrence
Other	Statutory requirements for the state in which the work is performed that is sufficient to meet normal and customary claims

SP-30, Charges for Training, Equipment, and Materials Supplied by the University

If the Contractor does not possess some of the personnel training or certification, equipment, materials or other items it is required to have or provide under the Contract, the University in its discretion may offer such items to the Contractor, subject to availability and schedule. For any such items furnished by the University, the Contractor shall reimburse the University's costs. This reimbursement may be accomplished at the option of the University either by direct check payment from the Contractor or by withholding such sums from payment otherwise due the Contractor. Any such furnishing of training or other items shall not be cause for any extension of time for contract performance by the Contractor nor for any increase in monies otherwise due the Contractor.

SP-31, Liability for Fines and Penalties

If a Federal or state body or other party assesses a fine, penalty, or other assessment for a violation due to performance or failure to perform of one or both parties to the Contract, the parties shall share such assessment in proportion to their relative fault in causing the violation. If under such allocation, the Contractor owes a net amount to the University, the University may collect this amount by check from the Contractor or by offset against amounts otherwise payable to the Contractor. If under such allocation, the University owes a net amount to the Contractor, the University may pay this amount by check or by offset amounts otherwise payable to the University from the Contractor.

SP-32, Access to Work Site

A. The worksite for the access road and utility truck is in an area where research is conducted. The University will require the Contractor to vacate the site during tests.

1. The University-anticipated research schedule indicates interruptions per the duration of the performance period. The interruptions could be up to approximately (____) hours in duration. The Contractor and all personnel shall leave the (____) site during this time. In addition, testing may require that the Contractor will not be allowed to be present at the worksite. The Contractor's schedule is to allow for these delays.

   The University will notify the Contractor a minimum of 24 hours in advance of these times for the one and a half hour period. The University will notify the Contractor

approximately one (1) hour before the time that the Contractor must vacate the construction-site. The Contractor shall schedule and perform the work to minimize the impact of required interruptions.

B. Sign in Procedure

Due to the nature of the research conducted, the University's policy requires that the University be fully aware of the number and location of all personnel who enter the site area.

This awareness policy requires that all personnel sign in and out of the site during normal office hours (7:30 a.m. to 4:30 p.m.). The escort will obtain exchange badges and maintain a daily list of all construction personnel under its control.

For personnel making multiple trips in and out of the construction-site (concrete trucks), the driver will sign in initially, advise the secretary of the schedule, be recognized for raising the box gate (inter-barrier) and sign out on the last run.

SP-33, Alterations in Contract

Article 33 of General Provisions: Fixed Price Construction Contracts, dated July 15, 1991, entitled "Disputes" is deleted in its entirety and is replaced with Article 33 entitled "Disputes/Arbitration" as follows:

ARTICLE 33. DISPUTES/ARBITRATION

(a) Definitions. For the purposes of this article:

(1) "Arbitration decision" means a decision of the Board in an arbitration pursuant to this article.

(2) "Board" means the Department of Energy Board of Contract Appeals established by the Secretary of Energy pursuant to Section g(a)(1) of the Contract Disputes Act of 1978, 41 U.S.C. 607 (a)(1).

(3) "Claim" means a demand or assertion by either contracting party seeking, as matter of right, the payment of money in a sum certain, the adjustment or interpretation of a contract term, or any other relief arising under, or relating to, this contract.

(4) "Counterclaim" means a claim asserted in a pleading filed with the Board in an

arbitration pursuant to this article, which claim arises from the same occurrence or transaction related to this contract that is the subject matter of the opposing party's claim. A counterclaim is not required to be submitted to the Laboratory Procurement Manager.

(5) "Rules of the Board" means the Board's rules promulgated at 10 C.F.R. Part 1023, Subpart A.

(b) Nature of contract. This contract is not a Government contract and therefore is not subject to the Contract Disputes Act of 1975 (41 U.S.C. 601-613). The parties agree that DOE is not a party to this contract and is not directly liable to the Contractor for claims and disputes within the purview of this article. Further, the parties agree that, for the purposes of this contract, the University is not an agent of DOE, and neither the presence of this article in the contract nor provision for arbitration by the Board shall create or imply privity of contract between the Contractor and DOE.

(c) Scope of Article. The rights and procedures set forth in this article are the exclusive rights and procedures for resolution of all claims and disputes arising under, or relating to, this contract. The parties shall be bound by an arbitration decision, which shall be enforceable as provided in the Federal Arbitration Act (9 U.S.C. 1 et seq.) and the terms of this article.

(d) Submission of Claim; Laboratory Procurement Manager's Decision.

(1) Unless otherwise provided in this contract, the Contractor must file any claim against the University within 30 calendar days after the Contractor knew or should have known the facts giving rise to the claim.

(2) The Contractor must submit any claim in writing first to the Contract Administrator, who shall attempt to resolve the matter within a reasonable amount of time. If the Contract Administrator does not resolve the claim in a manner satisfactory to the Contractor, and the Contractor desires to pursue further action, the Contractor must submit the claim in writing to the Laboratory Procurement Manager.

(3) Within sixty days after receipt of the claim, the Laboratory Procurement Manager must issue a written decision or notify the Contractor of the time within which a decision will be issued, which time shall be reasonable, taking into account such factors as the size and complexity of the claim and the adequacy of the information provided by the Contractor in support of the claim. If the Laboratory Procurement Manager fails to issue a written decision within the specified period, the Contractor may demand arbitration by the Board as if the claim had been denied.

(4) The Contract Administrator may also submit a claim against the Contractor in writing to the Laboratory Procurement Manager, who shall issue a written decision.

(5) The decision of the Laboratory Procurement Manager shall be final and conclusive unless the complaining party demands arbitration by the Board in accordance with the terms of this article.

(e) Demand for Arbitration. If the decision of the Laboratory Procurement Manager is not satisfactory to a complaining party, and the complaining party desires to pursue further action, the complaining party must, within 45 days after receipt of the Laboratory Procurement Manager's decision, submit to the Board a written demand for arbitration of the claim. The Board shall arbitrate the claim and any counterclaims in accordance with the Rules of the Board.

(f) Right to Hearing; Costs. In any arbitration pursuant to this article, both parties shall be afforded an opportunity to be heard and present evidence in accordance with the Rules of the Board. Unless the Board orders otherwise, each party shall pay its own costs of prosecuting or defending an arbitration before the Board.

(g) Arbitration Decision. An arbitration decision shall be final and conclusive unless a party within 120 days after receipt of the decision, files an action to vacate, modify or correct the decision pursuant to the Federal Arbitration Act.

(h) Contractor Performance Pending Claim Resolution. The Contractor shall proceed diligently with performance of this contract and shall comply with any decision of the Contract Administrator or Laboratory Procurement Manager, pending final resolution of any claim or dispute arising under, or relation to, this contract.

(i) No Other Court Action. No action based upon any claim or dispute arising under, or relating to, this contract shall be brought in any court except as provided in this article.

(j) Choice of Law. This contract shall be governed by Federal law as provided for in this subparagraph. Irrespective of the place of award, execution of performance, this contract shall be construed and interpreted, and its validity determined, according to the Federal common law of government contracts as enunciated and applied to prime government contracts by the Board and Federal courts having appellate jurisdiction over the decisions of the Board rendered pursuant to the Contract Disputes Act of 1978. The Federal Arbitration Act and other Federal statutes (including the Contract Disputes Act of 1978), Federal rules (including the Federal Acquisition Regulation, the Department of Energy Acquisition Regulation, and the Rules of the Board) shall apply in accordance with their respective provisions.

(k) Interest. Interest on amounts adjudicated due and unpaid by a party shall be paid from the date the complaining party files a demand for arbitration with the Board. Interest on claims shall be paid at the rate established by the Secretary of the Treasury of the United States pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board.

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<u>NOTE TO CA</u>: This clause is optional. Its use is intended to prevent bid shopping and bid peddling and inclusion will be at the discretion of the CA and Project Leader. If this clause is used, a *List of Subcontractors* form must be included in the Bid Form. The CA and the Project Leader will determine which work categories are applicable.

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SP-34, Subcontractor Listing

For each of the categories of work contained in the *List of Subcontractors* form included as part of the bid form, the bidder shall submit the name, address, telephone number, and subcontract dollar amount for the responsible subcontractor to whom it proposes to subcontract the designated work categories. If alternate bids are required under this solicitation, the bidder may list both the name of the subcontractor with whom it proposes to Contract, if awarded the Contract on the base bid only; and the name of a different subcontractor with whom it proposes to subcontract, if the award is made based upon the base bid and additive alternates. The bidder shall provide subcontract lump sum dollar amounts for each base bid and shall cause such list of dollar amounts to be delivered into the hands of the Contract Administrator no later than 72 hours after the bid opening (excluding weekends and legal holidays).

The bidder shall write the word "Bidder" in the space provided for the name of the subcontractor if the bidder intends to perform that category of work. In such case, all personnel performing such work at the site shall be carried on the Contractor's own payroll. Furthermore, the Contractor shall not substitute any subcontractor in place of itself except in extraordinary circumstances. The Contractor shall submit to the Contract Administrator clear and convincing evidence of such extraordinary circumstances.

A bid that fails to specify a subcontractor or the bidder as the party responsible for each listed portion of the work will be deemed non-responsive.

The bidder shall list and use only responsible subcontractors. To be determined responsible a prospective subcontractor must:

- Have or be able to obtain adequate financial resources to perform the subcontract;
- Be able to meet the schedule, taking into consideration all existing commitments;
- Have a satisfactory performance record;
- Have a satisfactory record of integrity; and
- Be able to meet the required (licensing or experience requirements) as specified in the Specifications.

If a subcontractor is found by the Contract Administrator to be non-responsible, the Contract Administrator may, at his/her discretion, require substitution for the non-responsible subcontractor as noted above, or determine the Contractor non-responsible and award the Contract to the next low bidder.

The Contractor shall not substitute any subcontractor in place of any subcontractor listed in the original bid without consent of the Contract Administrator. The Contract Administrator may consent to the substitution if it is determined that the Contractor has listed the original subcontractor not as a sham but in good faith, and determines further, based upon clear and convincing evidence, that:

1. The subcontractor listed in the bid fails or refuses to execute a written Contract after having a reasonable opportunity to do so;
2. The listed subcontractor becomes bankrupt or insolvent;
3. The listed subcontractor fails to or refuses to perform its subcontract;
4. The listed subcontractor fails or refuses to meet the bond requirements;
5. The name of the subcontractor was listed as a result of an inadvertent clerical error; and
6. The subcontractor made a mistake in its bid and cannot be expected to perform the work listed at the subcontract bid price.

The Contractor shall give notice, in writing, to the listed subcontractor on the same day of the Contractor's request and the reasons for the substitution.

The Contract Administrator may require substitution when:

1. The Contract Administrator deems a subcontractor non-responsible, but only when the Contract Administrator, in the exercise of sound discretion, finds that a) the Contractor has not attempted to circumvent the restraint on bid-shopping/peddling by listing a non-responsible subcontractor in order to gain an opportunity to bid peddle prior to making the substitution; b) the substitution would not be prejudicial to the rights of other bidders, or otherwise impair the integrity of the procurement process; and c) the substitution would be in the best interests of the University and the Government; or

2. The Contract Administrator determines that the subcontractor does not meet the requirements set out in the experience, licensing, or quality assurance sections of the Specifications, but only when the Contract Administrator, in the exercise of sound discretion, also finds that the substitution for this cause would be in the best interest of the University; or

3. The Contract Administrator determines that the work performed by the listed subcontractor is substantially unsatisfactory, and/or the work is not in accordance with the Contract documents; or

4. The Contract Administrator determines that the subcontractor is substantially delaying or disrupting the progress of the work.

Except as otherwise provided herein, the Contractor shall not have any of the listed categories of work involved in the performance of this Contract performed by any subcontractor other than the subcontractor listed for the performance of such work.

Furthermore, the Contractor shall not permit any subcontract to be voluntarily assigned or transferred, or allow it to be performed by anyone other than the original subcontractor listed on the *Listing of Subcontractors* form without the consent of the Contract Administrator. However, the prohibitions on substitution do not apply to performance of "change orders."

The Contract Administrator shall have the authority to disapprove or reject the employment of any subcontractor he/she has determined to be non-responsible. Furthermore, the Contract Administrator shall have the right to require any relevant information including, but not limited to, the cost of performance hereunder by any subcontractor listed or proposed as a substitute for a listed subcontractor. Imposition of any requirement under this clause shall not give rise to any cause of action against the University by the successful bidder or by any subcontractor engaged or proposed to be engaged hereunder.

If a substitution is authorized, the Contractor shall not be entitled to any increase in the Contract price. However, if the Contract price of performing the work is decreased as a result of an approved subcontractor substitution, the Contract price shall be reduced by the same amount. In the event that the Contract Administrator finds that substitution is not justified, the Contractor's failure or refusal to proceed with the work by or through the original subcontractor listed shall be grounds for termination of the Contract.

A Contractor violating any of the terms in this clause commits a material breach of the Contract. In such event, the Contract Administrator may exercise the option of terminating the Contract or reducing the Contract price by the amount of reduction in costs to the Contractor which resulted from the Contractor's breach.

<u>Definitions</u>:

"Contractor" for the purpose of this provision means the signatory to this Contract who is the general contractor on a construction project. The Contractor Contracts and interacts directly with the University.

"Subcontractor" for the purpose of this provision shall mean an entity who performs active duties on-site, involving construction, fabrication, or installation of materials or items of equipment in connection with one or more designated work categories contained in the *List of* S*ubcontractors* form included as part of the bid form. The definition does not include suppliers except for those suppliers specifically required to be listed on the *List of* S*ubcontractors* form.

"Responsibility" for the purpose of this provision refers to a subcontractor's ability to perform all the subcontract requirements.

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NOTE TO CA: Insert This Provision on all Contracts Which will Disturb More Than 5 Acres of Land During Construction.

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SP-35, Storm Water Pollution Prevention Plan

A. National Pollutant Discharge Elimination system (NPDES) regulations (40 CFR 122.26) require that a NPDES Permit be obtained from the EPA on every construction project which disturbs 5 acres or more of land. The University and the Contractor must be Co-Permittees on the NPDES permit. The NPDES permit must be obtained prior to the start of construction.

B. A Storm Water Pollution Prevention Plan (SWPPP) which describes methods and measures to be taken to eliminate the discharge of pollutants from the site with storm water is a part of these Contract documents and is to be included in the NPDES permit application.

C. The NPDES permit application and certification includes the following documents which the Contractor agrees to execute and to fully comply with:

1. *NPDES General Permit Notice of Intent For Construction Activities*.
2. *Notice of Intent/Certification Statement of Authorization*.
3. *Notice of Intent/Certification Statement of Contractor*.
4. *Storm Water Pollution Prevention Plan (SWPPP) For Discharges Related To Industrial Activities* as required by 40 CFR 122.26.
5. *Storm Water Regulation - Pollution Prevention Plan Requirements for Construction Activities*. .57 FR 41219, September 9, 1992.
6. *Storm Water Pollution Prevention Plan/Certification Statement of Authorization*.
7. *Storm Water Pollution Prevention Plan/Contractors Certification Statement*.
8. *Notice Of Termination - Authorized Personnel.*
9. *Notice Of Termination - Contractors.*

D. Within 30 days after award of the Contract, the Contractor shall provide a *Sequence of Operations for Implementation of the SWPPP*, and shall execute the certifications required for the NPDES permit.

E. Within 10 days after final acceptance, and prior to payment of the Contractor's final invoice, the Contractor shall execute the notice of *Termination - Contractor*.

F. All temporary and permanent controls and measures specified by the SWPPP, and which may later become necessary to comply with the NPDES regulations shall be at the Contractor's expense, and shall be included in the Contract price.

G. In the event that the Contractor fails to comply with this provision the University may take such action as determined by the Contract Administrator to prevent the discharge of storm water from the site. In this event, all such measures taken by the University shall be at the Contractor's expense, and the cost thereof shall be deducted from payments otherwise due the Contractor.

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NOTE TO CA: If the Project is in a Radiological Controlled Area or Nuclear Area, the Following Clauses Need to be Added.

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SP-36, Radiological Control

A. It is expected that radioactive materials will be encountered during this work. All work on this Contract will be considered to be radiation work, and all workers shall be radiation workers.

B. The University will provide Health Physics personnel to monitor for any radiological contamination during the site work operation.

C. The Contractor personnel shall comply with the University's requirement regarding radiation safety.

SP-37, Special Radiological Conditions

All work which is performed or scheduled to be performed by the Contractor within a radiation controlled area shall be in accordance with the following provisions:

A. Compliance with Procedures

The Contractor shall insure that all persons under its control, comply with the regulations and procedures pertaining to control of radiation and/or contamination which are set out or provided for herein or in other provisions of the subcontract.

B. Allowable Exposure Limits

It is expected that each individual will be permitted to work in a radiological control area a minimum of forty (40) hours during any seven (7) consecutive days without exceeding the established permissible limits of radiation as specified in DOE Order 5480.11. The Contractor shall manage the work to insure the limit is not exceeded. The Contractor shall be responsible for being aware of each employee's current radiation exposure status before assigning radiation zone work and for controlling each of its employees' exposure to ionizing radiation below 1.5 rem per calendar year.

Individuals under 18 years of age shall be excluded from radiation control areas.
In any case where the external exposure status of an individual becomes uncertain, or when administrative controls have been exceeded due to an unplanned amount of radiation dose, the individual(s) involved shall be prohibited from further radiation work.

All exposures to radiation shall be maintained as low as reasonably achievable.

C. Modification of Regulations

If the type or amount of radioactive material encountered is different than expected, the University may modify or change regulations pertaining to radiation exposure limits, boundaries, permissible exposure rates, protective clothing, and exposure time of personnel. If such changes are beyond the control and without the fault or negligence of the Contractor, and such changes cause an increase or decrease in the Contractor's cost of or time required for performance of the work, an equitable adjustment shall be made in accordance with the General Provisions.

D. Suspension of Work

The University may require suspension of all or part of the work in progress if unfavorable radiation control practices or conditions are detected, such as the following:

- Potential of contamination resulting from excessive winds or uncovering of surface contamination.
- Increase of working personnel dose rates above anticipated levels resulting from inadequate control of process control factors or other unanticipated problems beyond the control and without the fault or negligence of the Contractor.
- Noncompliance with Radiation Controls/Procedures or potential of contamination resulting from poor work practices by the Contractor.

Work will not be resumed until a satisfactory resolution is determined by the Contract Administrator after consultation with the Contractor and Radiation Control representatives.

If the conditions requiring such suspension of work are beyond the control and without the fault or negligence of the Contractor and such conditions cause an increase or decrease in the Contractor's cost of or time required for performance of the work, an equitable adjustment shall be made in accordance with the General Provisions.

E. Radiological Training and Medical Examination

1. The Contractor shall require all persons under its control to attend an orientation session prior to their initial entry into a Radiation Control Area. The Contractor shall require all personnel to attend daily safety briefings (approximately 15 minutes) prior to start of each day's work.

2. A completed Medical Clearance Statement signed by an OSHA approved Medical Doctor, shall be submitted to the Contract Administrator for each employee prior to their first day of any work on-site of work on this project. A sample Medical Clearance Statement is included herewith as Appendix 1. Respirator fittings need to be fitted in accordance with an OSHA approved program and approved by the Contract Administrator.

3. All time spent by Contractor's employees in orientation, radiation training and medical examinations shall be at the expense of the Contractor.

4. The Contractor shall be aware of the time required to perform necessary radiation protection steps when in radiation control areas. Examples of some of the time requirements follow:

   a) Respiratory fitting, approximately 2 hours per person.
   b) Protective clothing and/or equipment donning, approximately 1 or 2 hours per day.
   c) Radiation Protection orientation, up to 4 hours per session.

5. All personnel working in radiation control areas where respiratory protection is required, or may be required, and all personnel required to be fitted for respiratory protection shall remove facial hair prior to beginning work in the radiation control area or appearing for fitting of the respiratory protection.

F. Control of Personnel Entering a Radiation Control Area

1. Unless otherwise directed by the University, the Contractor shall not permit any person under its control to enter a Radiation Control Area unless a University representative is present to specify the protective clothing and radiation instruments to be used, to provide radiation monitoring services, and to provide any other necessary service with respect to control of radiation and/or contamination.

2. Personnel Log - The Contractor shall have and maintain a daily log of all work in a radiation area. The log shall include a description of the work item and the names of personnel assigned to each work item, and be made available to the Contractor Administrator as requested. The Contractor shall provide the following information for each person prior to assignment of work in a radiation area:

   a) Name
   b) Social security number
   c) Previous radiation exposure history

G. Furnishing of Protective Clothing

All protective clothing required by Contractor personnel for work inside Radiation Control Area will be furnished at the job site by the University.

H. Use of Protective Clothing, Personnel Items and Dosimeters

1. All persons working in or entering a Radiation Control Area will be required to wear protective clothing. Removal of outer personal clothing may be required.

2. Personal items normally worn and/or carried in clothing pockets shall be removed prior to entering/working in the Radiation Control Area. These items include watches, rings, jewelry, keys, knives, etc.

3. All persons will be required to carry, in the prescribed manner, dosimeters while within the Radiation Control Area. Note: Dosimeters shall be exchanged on a monthly basis. The Contractor's personnel shall cooperate with the University during the time required for the exchange of dosimeters and for weekly gamma pencil dosimeter readings if needed.

4. The Contract Administrator will determine the requirements for and provide all necessary equipment for proper respiratory protection in a radiation control area.

I. Control of Personal Habits

The Contractor shall require all persons under its control to comply with the regulations forbidding employees to eat, drink, smoke or perform any act involving the transfer of any item from the hands to the body while within a Radiation Control Area. Personnel will be allowed to smoke, drink, and use toilet facilities in a designated area only upon the removal of the outer layer of protective clothing (if two layers of protective clothing are required) and completion of a radiation survey for possible contamination. Personnel will not be allowed to eat food of any type within the Radiation Control Area. Food may be consumed outside of the Radiation Control Area only after complete removal of ALL protective clothing and the completion of a radiation survey for possible contamination.

J. Temporary Construction Facilities

The Contractor shall locate its offices, latrines, lunchroom, and all other facilities not essential within a Radiation Control Area, in areas designated or approved by the University outside of the Radiation Control Area.

K. Control of Personnel Leaving Radiation Zone

The University will survey all persons leaving a Radiation Control Area for possible contamination. This survey will require approximately one (1) to five (5) minutes per person

per exit. The University will periodically survey all Contractor personnel for possible contamination whether or not a Radiation Control Area is established within the Contractor's work area. Any decontamination services required will be performed by the University. All Contractor personnel assigned to work in a radiation control area shall submit bioassay samples, or participate in necessary tests, as requested by the Contract Administrator, or his/her designated representative. Samples of testing will be done by the Laboratory's Health, Safety, and Environment Division. The bioassay programs or tests may include, but not be limited to, the following:

a) Urine samples
b) Nose swipes
c) Whole body count

L. Decontamination of Individuals

Should contamination be detected on a person being surveyed, the individual will be properly decontaminated. All decisions regarding extent of contamination and control measures to be applied will be made by the University.

M. Disposition of Contaminated Personal Property

1. The Contractor agrees to submit to the University for survey and decontamination, if necessary, and for destruction or other disposal if the University should determine that decontamination is impracticable, any equipment, tools, or other personal property brought into the Radiation Control Area by the Contractor, its employees, and any subcontractor and its employees.

2. The necessary survey for detection of contamination will be performed immediately prior to the removal of any property from a Radiation Control Area and may also be performed before the movement of any such property from any location within LANL.

3. An equitable adjustment, excluding profit, in the subcontract price will be made for all work performed by the Contractor, at the direction of the University, in connection with decontamination of equipment. An equitable adjustment will also be made in the Contract price for any personal property of the Contractor, its employees, and any subcontractor and its employees, lost or damaged as a result of contamination not due to their fault or negligence.

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<u>NOTE TO CA:</u> This clause is optional. The Contractor must be doing work in which the potential of risk of exposure to nuclear material exists. It is not to be included if the Contractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170c. or k. of the Act for the activities under the Contract. {Will be moved to General Provisions.} **See Standard Practices 28.2**

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<u>SP-38, Nuclear Hazards Indemnity Agreement</u>

A. **Authority.** This clause is incorporated into the subcontract pursuant to the authority contained in subsection 170d. of the Atomic Energy Act of 1954, as amended (hereinafter call the Act).

B. **Definitions.** The definitions set out in the Act shall apply to this clause.

C. **Financial protection.** Except as hereafter permitted or required in writing by DOE or the University, the Subcontractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability, as described in paragraph D.2. below. DOE or the University may, however, at any time require in writing that the Subcontractor provide and maintain financial protection of such a type and in such amount as DOE or the University shall determine to be appropriate to cover such public liability, provided that the costs of such financial protection are reimbursed to the Subcontractor by DOE or the University.

D. **Indemnification.**

1. To the extent that the Subcontractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE or the University, DOE or the University will indemnify the Subcontractor and other persons indemnified against (i) claims for public liability as described in subparagraph D.2. of this clause; and (ii) such legal costs of the Subcontractor and other persons indemnified as are approved by DOE or the University, provided that DOE's and the University's liability, including such legal costs, shall not exceed the amount set forth in section 170e.(1)(B) of the Act in the aggregate for each nuclear incident or precautionary evacuation occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with the subcontract.

2. The public liability referred to in subparagraph D.1. of this clause is public liability as defined in the Act which (i) arises out of or in connection with the activities under the subcontract, including transportation; and (ii) arises out of or results from a nuclear incident or precautionary evacuation, as those terms are defined in the Act.

E. **Waiver of Defenses.**

1. In the event of a nuclear incident, as defined in the Act, arising out of nuclear waste activities, as defined in the Act, the Subcontractor, on behalf of itself and other persons indemnified, agrees to waive any issue or defense as to charitable or government immunity.

2. In the event of an extraordinary nuclear occurrence which

   a) Arises out of, results from, or occurs in the course of the construction, possession, or operation of a production or utilization facility; or

   b) Arises out of, results from, or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization facility; or

   c) Arises out of or results from the possession, operation, or use by the Subcontractor or a lower-tier subcontractor of a device utilizing special nuclear material or by-product material, during the course of the subcontract activity; or

   d) Arises out of, results from, or occurs in the course of nuclear waste activities, the Subcontractor, on behalf of itself and other persons indemnified, agrees to waive

      (1) Any issue or defense as to the conduct of the claimant (including the conduct of persons through whom the claimant derives its cause of action) or fault or persons indemnified, including, but not limited to

         (a) Negligence;
         (b) Contributory negligence;
         (c) Assumption of risk; or
         (d) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God;

(2) Any issue or defense as to charitable or governmental immunity; and

(3) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof. The waiver of any such issue or defense shall be effective regardless or whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

e) The term extraordinary nuclear occurrence means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in 10 CFR part 840.

f) For the purposes of that determination, "offsite" as that term is used in 10 CFR part 840 means away from "the subcontract location" which phrase means any DOE facility, installation, or site at which contractual activity under the subcontract is being carried on, and any Subcontractor-owned or controlled facility, installation, or site at which the Subcontractor is engaged in the performance of contractual activity under the subcontract.

3. The waivers set forth above

a) Shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action;

b) Shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified;

c) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

d) Shall not apply injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

e) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;

f) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

g) Shall be effective only with respect to those obligations set forth in this clause and in insurance policies, contracts or other proof of financial protection; and

h) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (A) the limit of liability provisions under subsection 170e. of the Act, and (b) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

F. **Notification and litigation of claims.** The Subcontractor shall give immediate written notice to DOE and the University of any known action or claim filed or made against the Subcontractor or other person indemnified for public liability as defined in paragraph D.2. Except as otherwise directed by DOE through the University, the Subcontractor shall furnish promptly to DOE, copies of all pertinent papers received by the Subcontractor or filed with respect to such actions of claims. DOE and the University shall have the right to, and may collaborate with, the Subcontractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right to (1) require the prior approval of DOE and the University for the payment of any claim that DOE University may be required to indemnify hereunder; and (2) appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that DOE and the University may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE or the University, the Subcontractor shall furnish a reasonable assistance in effecting a settlement or asserting a defense.

G. **Continuity of DOE obligations.** The obligations of DOE and the University under this clause shall not be affected by any failure on the part of the Subcontractor to fulfill its obligation under the subcontract and shall be unaffected by the death, disability, or termination of the Subcontractor, or by the completion, termination or expiration of the subcontract.

H. **Effect of other clauses.** The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of the subcontract, including the

clause entitled Contract Disputes, provided, however, that this clause shall be subject to the clauses entitled Covenant Against Contingent Fees, Officials Not to Benefit, and Examination of Records by the Comptroller General, and any provisions that are later added to the subcontract as required by applicable Federal law, including statutes, executive orders and regulations, to be included in Nuclear Hazards Indemnity Agreements.

I. **Civil Penalties.** Reserved.

J. **Criminal penalties.** Any individual director, officer, or employee of the Subcontractor or of its lower-tier subcontractors and suppliers who are indemnified under the provisions of this clause are subject to criminal penalties, pursuant to 223c. of the Act, for knowing and willful violation of the Atomic Energy Act of 1954, as amended, and applicable DOE nuclear safety-related rules, regulations, or orders which violation results in, or, if undetected, would have resulted in a nuclear incident.

K. **Inclusion in subcontracts.** The Subcontractor shall insert this clause in any lower-tier subcontract which may involve the risk of public liability, as that term is defined in the Act and further described in paragraph (d)(2) above. However, this clause shall not be included in lower-tier subcontracts in which the lower-tier subcontractor is subject to Nuclear Regulatory Commission (NRC) financial protection requirements under section 170b of the Act or NRC agreements of indemnification under 170c. or k. of the Act for the activities under the subcontract.

SP-39, Environment, Safety, and Health Compliance and Stop Work

A. The Contractor shall take all reasonable precautions in the performance of the work under the Contract to protect the safety and health of employees and all other persons; minimize danger from all hazards to persons, property and the environment; and shall comply with all applicable health, safety, fire protection, and environmental regulations and requirements, including notification and reporting requirements of the Contractor, the University, and DOE. Additionally, in the performance of work under the Contract, the Contractor shall take all reasonable measures and precautions at all times to prevent injuries to or the death of its employees or any other person. Such measures or precautions shall include, but shall not be limited to, employing all safeguards and posting all warnings necessary to protect workers and others against any conditions which could be dangerous and providing a safe environment designed to prevent accidents of any kind whenever work is being performed under the Contract. The Contractor shall bear the sole responsibility for Environment, Safety, and Health (ESH) compliance in connection with its work under the Contract and shall indemnify and hold harmless the University from all claims for damages for any injury, damages or death to any person arising from the Contractor's work under the Contract and from all fines,

penalties or monetary damages assessed by any regulatory authority arising from the Contractor's work under the Contract.

B. Without prejudice to any other "Stop Work" rights contained in the Contract, any DOE, University or Contract employee may stop work under the Contract in accordance with the provisions of Laboratory Procedure 116, "Stop Work and Restart." The Contractor shall make no claim for an extension of time or compensation or damages by reason of or in connection with work stopped in accordance with this clause.

SP-40, Economic Development in Northern New Mexico

The Subcontractor agrees, for work performed at Los Alamos National Laboratory and which requires use of lower-tier subcontractors/suppliers, to utilize firms located in northern New Mexico to the maximum extent possible consistent with prudent business practices and providing best value to the University and the Government.

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NOTE TO CA: The Following Three Clauses Apply if the Contract Involves Access to Classified Information or a Significant Quantity of Special Material or Will be Performing Unescorted Work Within an "L" or "Q" Cleared Security Area.

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SP-41, Security

A. **Responsibility.** It is the Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The Contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the Contractor's possession in connection with the performance of work under this Contract. Except as otherwise expressly provided in this Contract, the Contractor shall, upon completion or termination of this Contract, transmit to the University any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this Contract. If retention by the Contractor of any classified matter is required after the completion or termination of the Contract and such retention is approved by the University, the Contractor will complete a certificate of possession to be furnished to the University specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the University, the security provisions of the Contract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the Contract.

B. **Regulations**. The Contractor agrees to conform to all security regulations and requirements of DOE.

C. **Definition of classified information.** The term "classified information' means Restricted Data, Formerly Restricted Data, or National Security Information.

D. **Definition of restricted data**. The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons: (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

E. **Definition of formerly restricted data**. The term *"Formerly Restricted Data"* means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

F. **Definition of National Security Information**. The term *"National Security Information"* means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

G. **Definition of Special Nuclear Material (SNM).** The term *"SNM"* means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been detained to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

H. **Security clearance of personnel**. The Contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

I. **Criminal liability**. It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the Contractor or any person under the Contractor's control in connection with work under the Contract, may subject the Contractor its agents, employees, or lower-tier subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seg.; 18 U.S.C. 793 and 794; and E.O. 12356.)

J. **Lower-tier Subcontracts and purchase orders**. Except as otherwise authorized in writing by the University, the Contractor shall insert provisions similar to the foregoing in all lower-tier subcontracts and purchase orders under the Contract.

SP-42, Classification

In the performance of the work under the Contract, the Contractor shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and goods originated or generated under the Contract in accordance with classification regulations and guidance furnished to the Contractor by the University. Every lower-tier subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or goods shall include a provision to the effect that in the performance of such subcontract or purchase order, the lower-tier subcontractor or supplier shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and goods in accordance with classification regulations and guidance furnished to such lower-tier subcontractor or supplier by the Contractor.

SP-43, Foreign Ownership, Control, or Influence Over Contractor

A. For purposes of this clause, a foreign interest is defined as any of the following:

1. A foreign government or foreign government agency;
2. Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
3. Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., that is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
4. Any person who is not a U.S. citizen.

B. Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that the compromise of classified information or a significant quantity of special nuclear material as defined in 10 CFR Part 710, may result.

C. For purposes of this clause “Contractor” means any contractor at any tier.

D. The Contractor shall immediately provide the University written notice of any changes in the extent and nature of FOCI over the Contractor that would affect the answers to the questions in the Certification submitted for the solicitation that resulted in the Contract. Further, notice of changes in ownership or control that are required to be reported to the Securities and

Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the University.

E. In those cases where a Contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the DOE shall consider proposals made by the Contractor to avoid or mitigate foreign influences.

F. If the DOE at any time determines that the Contractor is or is potentially subject to FOCI, the subcontractor shall comply with such instructions that the University shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

G. The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (g), in all lower-tier subcontracts under the Contract that will require access to classified information or a significant quantity of special nuclear material. The Contractor shall also require such lower-tier subcontractors to submit a completed certification required in DEAR 952.204-73 and covered in University Form 812 before award of a lower-tier subcontract. Information to be provided by a lower-tier subcontractor pursuant to this clause will be submitted to the University.

H. Information submitted by a Contractor as required pursuant to this clause shall be treated by the University and the DOE to the extent permitted by law as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

I. The requirements of this clause are in addition to the requirement that a Contractor obtain and retain the security clearances required by the Contract. This clause shall not operate as a limitation on the University's or the DOE's rights, including the University's right to terminate the Contract.

J. The University may terminate the Contract for default if

1. The Contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the University's instructions about safeguarding classified information, or make this clause apply to lower-tier subcontractors; or

2. In the University's judgment, the Contractor creates a FOCI situation to avoid performance or a termination for default. (The University may terminate the Contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the Contract cannot or chooses not to avoid or mitigate the FOCI problem.)