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ALAMEDA COUNTY

MAY 30 2017

CLERK OF THE SUPERIOR COURT  
By Sue Peaks Deputy

8 Attorneys for Plaintiff  
DYNAMIC MANAGEMENT SOLUTIONS, LLC  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ALAMEDA  
12

RG17862092-

13 DYNAMIC MANAGEMENT SOLUTIONS,  
LLC, a Georgia limited liability company,  
14

Case No.

COMPLAINT FOR BREACH OF  
CONTRACT

15 Plaintiffs,

16 vs.

17 THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA and DOES 1-50, inclusive,  
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Defendants.  
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BY FAX

1 Plaintiff Dynamic Management Solutions, LLC (“DMS”) hereby alleges as follows:

2 **PARTIES**

3 1. Plaintiff Dynamic Management Solutions, LLC (“DMS” or “Plaintiff”) is a limited  
4 liability company organized under the laws of the State of Georgia and, at all relevant times herein,  
5 had all necessary licenses to perform and contract for the performance of the work described herein.

6 2. At all relevant times herein, DMS was a small disadvantaged and women-owned  
7 small business concern, owned by Savage Logistics, LLC and NorthStar Group Services, Inc., under  
8 an approved U.S. Small Business Administration (SBA) Mentor-Protégé Agreement.

9 3. Plaintiff is informed and believes and based thereon alleges that defendant the  
10 Regents of the University of California (the “University”) is, and at all relevant times herein was, a  
11 California Constitutional Corporation authorized and empowered to administer the public trust  
12 known as the University of California, with full powers of organization and government thereof.  
13 Among other things, the University manages and operates Lawrence Berkeley National Laboratory  
14 (“LBNL”), including construction and alterations thereon, pursuant to the University’s Federal Prime  
15 Contract with the U.S. Government, represented by the Department of Energy (“DOE”). The  
16 University and LBNL are collectively referred to herein as the “University.”

17 4. Plaintiff is unaware of the true names and capacities of defendant Does 1 through 50,  
18 inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
19 Complaint to show their true names and capacities when the same have been ascertained, or  
20 according to proof.

21 5. Plaintiff is informed and believes, and on that basis alleges, that at all times  
22 mentioned herein, each of the defendants was and now is the partner, agent, servant, employee,  
23 representative and alter ego of each of the remaining defendants, and, in doing the things hereinafter  
24 alleged, was acting within the scope of his/her or its authority as such partner, agent, servant,  
25 employee, representative and alter ego with the knowledge, permission, consent and ratification of  
26 the remaining defendant.

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1 INTRODUCTION

2 6. Prior to commencing this action, Plaintiff presented a Certified Claim to the  
3 University in accordance with the claims procedure set forth in the parties' Subcontract for the  
4 Project at issue in this action. The University has denied Plaintiff's Certified Claim. Plaintiff has  
5 complied with and has exhausted any of its contractual obligations applicable to the claims advanced  
6 herein prior to commencing this action.

7 NATURE OF THE ACTION

8 7. This action arises out of the University's efforts to take advantage of Plaintiff, a  
9 women-owned small business, by misrepresenting the nature of the project that Plaintiff contracted  
10 to perform in an effort to obtain a low bid for the project's fixed-price subcontract. What was  
11 represented to be a straight-forward demolition and abatement project was, in reality, a highly  
12 complex and heavily regulated environmental characterization and remediation effort of a site that  
13 was a veritable cesspool of radioactive and other hazardous contaminated waste. These conditions  
14 were largely known to the University, but concealed from Plaintiff, at the time Plaintiff bid on the  
15 project and was awarded the subcontract.

16 8. Among other things, the University failed to disclose to Plaintiff that the project was  
17 subject to direct oversight and management by the United States Environmental Protection Agency  
18 ("EPA") due to the presence of significant levels of hazardous polychlorinated biphenyl ("PCB")  
19 contamination. Furthermore, the project site -- located in the hills above the University of California  
20 at Berkeley campus -- suffered from wide-spread radiological contamination, concealed from  
21 Plaintiff at the time of contracting.

22 9. The University's misrepresentations during the pre-subcontract and Subcontract  
23 periods regarding the existence, nature, and extent of hazardous chemicals and materials can only  
24 be described as deplorable. The University not only put Plaintiff at severe financial risk, but also  
25 created life-safety risks for Plaintiff's employees and subcontractors on the project site.

26 10. The University's misrepresentations regarding the nature of the project caused the  
27 costs of Plaintiff's work to more than double, and dramatically expanded the scope of Plaintiff's  
28 work. Yet, when faced with Plaintiff's legitimate claims for additional compensation and extensions

1 of time, the University fabricated various problems with Plaintiff's performance and, eventually,  
2 directed Plaintiff to demobilize from the project site. Shortly thereafter, and notwithstanding its  
3 instructions to demobilize, the University fraudulently claimed that Plaintiff had abandoned the  
4 project, and terminated Plaintiff for default.

### 5 THE PROJECT

6 11. The project at issue in this action involved the disconnection of utilities, abatement,  
7 demolition, soil cleanup and site stabilization of seven (7) buildings (Buildings 5, 16, 16A, 40, 41,  
8 52, and 52A) and slabs within the original site of LBNL, commonly known as "the Old Town Area"  
9 (the "Project").

10 12. LBNL is located in the hills of Berkeley, California, near the University of  
11 California, Berkeley campus, and in close proximity to residential neighborhoods.

12 13. Plaintiff is informed and believes that most of the buildings in the Old Town Area  
13 were constructed during and following World War II as research and support facilities for nuclear,  
14 chemical, and accelerator activities related to the cyclotron. Plaintiff is further informed and  
15 believes that the buildings in the Old Town Area have hosted, among other things, the experimental  
16 use of radioactive and hazardous materials, neutron generation, and metal plating and cleaning.

17 14. Plaintiff is further informed and believes that the buildings and building slabs  
18 included in the Project site were used for the following specific purposes:

19 a. Building 5 was referred to as the "chemistry annex" and was specifically designed  
20 for high-level radioactive chemistry work. Building 5 has also been used for magnetic fusion energy  
21 research.

22 b. Building 16 was originally built to house the XC Caultron magnet, a device used for  
23 enriching uranium. Building 16 also contained a sump pit and sump used in various physics  
24 experiments, and housed the Horton Sphere, a large vacuum chamber.

25 c. Building 16A was a small building adjacent to Building 16, which housed  
26 transformers.

27 d. Building 40 was constructed as a general-purpose warehouse, and was converted into  
28 an electronic development laboratory in the 1950s.

1 e. Similarly, Building 41 was constructed as a chemical warehouse, and was later  
2 converted into an electronics laboratory.

3 f. Building 52 was built as a warehouse, and housed a quarter-scale Bevatron (particle  
4 accelerator) model from the late-1940s through the mid-1950s. Later, Building 52 was used to store  
5 materials associated with the materials testing accelerator located in Livermore, and as a general  
6 research and shop facility.

7 g. Finally, Building 52A was used for general storage, and has housed a diesel-fuel  
8 generator and 55-gallon drums of diesel fuel.

9 15. Buildings 40, 41, 52, and 52A were demolished to slab in 2011, prior to  
10 commencement of the Project.

11 16. Plaintiff is informed and believes that based on their uses, the buildings and slabs in  
12 the Project area were known by the University to contain various hazardous and radiological  
13 contaminants and components.

14 **THE UNIVERSITY'S MATERIAL MISREPRESENTATIONS AND OMISSIONS**

15 **DURING THE PROCUREMENT PROCESS**

16 17. On or about December 1, 2014, the University and Plaintiff entered into a Fixed  
17 Price/Fixed Unit Price Construction Subcontract (Subcontract No. 7209030) (the "Subcontract") for  
18 the Project, which is commonly known as Old Town Phase I Deactivation and Demolition (D&D)  
19 Construction Services for the Lawrence Berkeley National Laboratory. A copy of the Subcontract  
20 (exclusive of exhibits, change orders, time extensions, plans and specifications), the Memorandum  
21 of Negotiations, the October 30, 2015 Proposal Assumptions – Revision 1, the General Provisions  
22 to the Subcontract, and the Subcontract's Statement of Work are attached hereto as Exhibit "A," and  
23 incorporated herein by this reference.

24 18. The Subcontract was the product of an extensive bidding process pursuant to which  
25 the University awarded the Subcontract to the bidder providing the best overall value.

26 19. On or about June 30, 2014, the University issued a Request for Proposals ("RFP")  
27 from prequalified sources for a fixed price subcontract for the Project.

28 20. The RFP provided prospective bidders with information, reports, and other

1 documents regarding the Project scope and site conditions, and instructed Plaintiff to use these  
2 documents in preparing its bid for the Project and performing work on the Project. In doing so, the  
3 University and Does 1 through 50, and each of them, impliedly warranted and represented that the  
4 plans, reports, and related Subcontract documents were accurate and that the conditions on the  
5 Project would be as represented in the documents, and that the documents, if followed, would permit  
6 satisfactory construction and completion of the Project. The University also impliedly covenanted  
7 that it would act in good faith and deal fairly with Plaintiff in its performance of the Subcontract.  
8 Moreover, by these documents, the University provided affirmations of fact, descriptions of the  
9 physical characteristics of the Project site, and permissible means and methods of construction,  
10 which became part of the basis of the bargain between the parties and thus constituted express  
11 warranties. Plaintiff relied on these warranties and representations in bidding the Project, accepting  
12 the award, and proceeding with the work.

13         21. Among other things, during the procurement process for the Project, the University  
14 represented that it had completed “[a]n extensive characterization campaign to better understand the  
15 extent of radiological and hazardous material contamination in the buildings, slabs and soils.” (*See*  
16 *Statement of Work, Exhibit A.*) The results of the University’s “extensive characterization  
17 campaign” were provided to bidders in two characterization reports, which served as the foundation  
18 for the University’s Waste Management Plan for the Project, published on the University’s  
19 procurement website in July 2014.

20         22. The characterization reports, and the Waste Management Plan, indicated that  
21 radiological contamination at the Project site was isolated to the Building 5 area. The Waste  
22 Management Plan expressly stated that “[n]o radiological waste is anticipated to be generated as a  
23 result of the removal of building 16, building 16A, or the slabs of buildings 40, 41, 52 and 52A.”

24         23. Further, the characterization reports provided by the University during the Project  
25 procurement process included information related to the presence of hazardous contamination,  
26 including PCBs, at the Project site. Notably, the University represented to bidders that PCBs were  
27 “not concerns at Building 5.”

28         24. In response to the University’s RFP, and based upon, *inter alia*, information provided

1 in the characterization reports and Waste Management Plan, Plaintiff submitted its Technical  
2 Proposal for the Project on or about September 9, 2014.

3 25. Prior to the University's issuance of the RFP for the Project, and during Subcontract  
4 negotiations, the EPA was in communication with the University expressing concern regarding PCB  
5 contamination at the Project site. Plaintiff is informed and believes that during this period, the EPA  
6 was strongly considering exercising direct oversight of the Project based on said significant levels  
7 of PCB contamination.

8 26. The University was aware of the EPA's concerns over the site, however, the  
9 University did not disclose to Plaintiff the EPA's concerns or that the EPA would or might directly  
10 oversee the Project until after Plaintiff executed its fixed price Subcontract.

11 27. After executing the Subcontract, Plaintiff learned for the first time that the University  
12 had been actively corresponding with the EPA regarding PCB releases and potential oversight issues  
13 at the Project site since at least April 2014 (i.e., two months prior to the time the University issued  
14 its RFP for the Project). Further, on November 21, 2014 (i.e., two weeks prior to Subcontract  
15 execution), the University sent a letter to the EPA in an attempt to dissuade the EPA from exercising  
16 Project-oversight. Inexplicably, these communications were withheld from Plaintiff, and their  
17 contents were not revealed during the Project procurement and Subcontract negotiations process.

18 28. As explained further below, shortly after Plaintiff executed its Subcontract with the  
19 University, it learned that the EPA was exercising direct oversight over the Project, which greatly  
20 impacted Plaintiff's work and considerably complicated and delayed completion of the Project.  
21 Direct EPA-oversight of a construction project dramatically increases the cost and time of  
22 completing a given project. When exercising direct oversight, the EPA has special requirements,  
23 forms and schedules with which the contracting parties must comply. As such, had Plaintiff been  
24 aware that the EPA was considering exercising direct oversight of the Project, Plaintiff would have  
25 substantially modified its fixed-price Technical Proposal to account for increased costs and time  
26 associated with the EPA's involvement.

27 29. The University's failure to disclose the potential for EPA oversight of the Project is  
28 particularly troubling as the University and Plaintiff engaged in extensive discussions regarding

1 Plaintiff's Technical Proposal for the Project prior to execution of the Subcontract. At no time  
2 during these pre-Subcontract discussions did the University indicate that the EPA planned to, or was  
3 considering, exercising direct oversight of the Project.

4 30. Specifically, Plaintiff and the University participated in four conference calls on  
5 September 9, 2014, October 21, 2014, October 24, 2014, and October 30, 2014. During these  
6 conference calls, Plaintiff and the University discussed Plaintiff's Technical Proposal, and the  
7 assumptions underlying the Technical Proposal, the Project scope, and expected site conditions,  
8 including the nature and extent of hazardous and radiological contamination at the Project site.  
9 These discussions were memorialized in a document entitled "Memorandum of Negotiations,"  
10 prepared by the University. (See Memorandum of Negotiations, Exhibit A.)

11 31. The Parties' Memorandum of Negotiations expressly incorporates a second  
12 document detailing Plaintiff's proposal assumptions, entitled "October 30, 2014 Proposal  
13 Assumptions – Revision 1." (See Memorandum of Negotiations and October 30, 2014 Proposal  
14 Assumptions – Revision 1, Exhibit A.)

15 32. The Memorandum of Negotiations, and the October 30, 2014 Proposal Assumptions  
16 – Revision 1 are Subcontract documents, based on the intent of the parties (i.e., Plaintiff and the  
17 University) to make these documents a material part of their Subcontract.

18 33. Plaintiff's Technical Proposal and planned Subcontract performance were premised  
19 upon the assumptions and understandings set forth in the October 30, 2014 Proposal Assumptions  
20 – Revision 1, and were extensively discussed with the University during Subcontract negotiations,  
21 as memorialized in the Memorandum of Negotiations. The October 30, 2014 Proposal Assumptions  
22 – Revision 1 set forth a number of material assumptions and understandings including, among other  
23 things:

- 24 • The hazardous material inventory is as described in the characterization
- 25 reports;
- 26 • Building 16/16A, 52, and 40/41 are not radiologically contaminated;
- 27 • All Building 5 material would be managed as low level radiological waste or
- 28 mixed low level waste. Importantly, radiological waste is disposed of by



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sending all such waste off-site to Nevada National Security Site (a disposal site in Nevada that is capable of receiving low level radiological waste);

- Plaintiff would sample and analyze soils to assess potential areas of contamination based on the findings of the University’s pre-demolition investigation (i.e.; per the characterization reports);
- Plaintiff would prepare and submit document and work packages for the University’s review and approval. The University’s review cycle for plans and work packages would be comprised of a 10 workday initial review, and a five-workday final review. Additionally, the University was to provide one consolidated list of comments to Plaintiff in order to expedite the review and approval process of Project documents and work plans; and
- Plaintiff was to execute and sequence the Project as depicted in Plaintiff’s baseline schedule, approved by the University. Per the Project’s Statement of Work (*see* Statement of Work, Exhibit A), Plaintiff was required to perform work in a serial fashion, with all “field work associated with [] slab and sub-slab removal [to be] completed before field work to remove the next slab beg[an].”

34. These assumptions provided the foundation for Plaintiff’s cost and schedule proposal for the Project. However, the University’s representations and warranties upon which Plaintiff based its assumptions were grossly inaccurate and misleading.

35. Following the above-described negotiations, and based upon Plaintiff’s Technical Proposal and underlying assumptions, the parties executed the Subcontract, which called for Plaintiff’s performance of the Project for the initial Subcontract price of \$7,435,529.00, subject to additions and deductions for changes in the work, with said work to be completed within 15 months of Subcontract execution (i.e., by March 1, 2016). The University agreed to make payment under the Subcontract in accordance with the terms thereof.

36. Although the University’s representatives admitted during the Project that the Memorandum of Negotiations (and incorporated October 30, 2014 Proposal Assumptions – Rev. 1)

1 was part of the Subcontract, when disputes arose between Plaintiff and the University later in the  
2 Project, the University reversed course, claiming that although it drafted and required that the  
3 Memorandum of Negotiations be executed by both parties on the same day as the Subcontract, it  
4 was not part of the Subcontract and, thus, could not be relied upon by Plaintiff for its extra work and  
5 delay claims. This was yet further evidence of not only the University's material breach of the  
6 Subcontract, but its fraudulent and deceitful conduct toward Plaintiff concerning the Project.

7 **CHANGES IN PROJECT SCOPE BASED ON CONCEALED AND DIFFERING SITE**

8 **CONDITIONS AND PROJECT REQUIREMENTS**

9 37. Plaintiff's work on the Project was almost immediately impacted and delayed as a  
10 result of numerous concealed and differing conditions, inadequate, incorrect, and/or incomplete  
11 Project site information provided to Plaintiff by the University, and the University's Project  
12 administration in violation of Subcontract requirements. As a result, Plaintiff was forced to incur  
13 substantial additional costs, expenses, and time in order to perform the required scope of work.  
14 Notwithstanding the foregoing, the University has refused to acknowledge Plaintiff's legitimate  
15 claims for additional compensation and extensions of time, and unreasonably failed to timely  
16 investigate and acknowledge the existence of clear and documented differing conditions. Instead,  
17 the University insisted that Plaintiff proceed with extra work without compensation, refused to  
18 comply with applicable Subcontract and legal requirements, and wrongfully terminated Plaintiff for  
19 cause.

20 38. While there were many changes to the Project scope based on concealed and differing  
21 Project site conditions and requirements, there are three primary categories of Project changes. First,  
22 due to PCB contamination beyond that represented in the characterization reports provided to  
23 bidders, despite the University's representations to the contrary, and as set forth in Paragraphs 25-  
24 29, above, the Project was subject to direct oversight by the EPA; thus, Plaintiff was forced to  
25 comply with the EPA's extensive and specific planning and sampling requirements, not  
26 contemplated by Plaintiff's Technical Proposal, or the Subcontract.

27 39. Second, the Project site suffered from wide-spread radiological contamination in  
28 areas beyond those disclosed by the University during the RFP process.

1           40.     Third, the University abandoned the parties' agreed-upon terms, including those set  
2 forth in the Memorandum of Negotiations and incorporated October 30, 2014 Proposal Assumptions  
3 – Revision 1, significantly increasing the complexity and scope of Plaintiff's work, and impeding  
4 Plaintiff's ability to efficiently perform work on the Project.

5           41.     These changes fundamentally altered the nature of the Project, expanded and  
6 modified the scope and objectives of the Project, dramatically increased Plaintiff's costs to perform  
7 and complete the Subcontract work, and clearly constituted a cardinal change to the Subcontract.

8                   A.     Environmental Oversight

9           42.     In or around February 2015, approximately two months after the parties signed the  
10 Subcontract, Plaintiff was informed for the first time that the EPA would exercise direct oversight  
11 of the work Plaintiff had contracted to perform pursuant to a risk-based approach under to 40 C.F.R.  
12 761.61(c) and 40 C.F.R. 761.79(h).

13           43.     Among other things, the EPA required full characterizations of all waste and soils  
14 containing PCBs, and mandated that the disposal of contaminated soils and materials occur pursuant  
15 to a manner approved by the EPA. Accordingly, Plaintiff was required to perform over 1,200  
16 samples of soils and building materials not included in Plaintiff's original scope of work for the  
17 Project.

18           44.     Additionally, the University required Plaintiff to assist in preparing a 500-page clean-  
19 up application package for submission to the EPA in connection with the demolition and  
20 remediation of Buildings 52, 52A, 16, and 16A, and the surrounding areas. The EPA's approval of  
21 the clean-up application package was required prior to Plaintiff's commencement of work on  
22 Buildings 52, 52A, 16, and 16A, and the surrounding areas.

23           45.     The preparation, submission, and implementation of the EPA clean-up application  
24 package were not contemplated by the Subcontract, based on the University's concealment of the  
25 EPA's involvement at the Project. Notably, the University has admitted that these items were  
26 beyond the original scope of the Subcontract by issuing a Subcontract Modification and Directed  
27 Change, directing Plaintiff to (1) conduct samples and assist in preparing the clean-up application  
28 package, and (2) implement the clean-up application package. However, this Subcontract

1 Modification and Directed Change did not account for schedule impacts, which were to be addressed  
2 by a subsequent change order.

3 46. Additionally, despite the University's representations in the RFP documents that  
4 PCBs were "not concerns at Building 5," in or around September 2015, Plaintiff discovered PCBs  
5 in the building material at Building 5 during the demolition process.

6 47. As a result of Plaintiff's discovery of undisclosed PCBs at Building 5, Plaintiff was  
7 required to assist the University in preparing documents and materials for purposes of notifying the  
8 EPA of this discovery. This preparation included conducting extensive additional samples of  
9 building materials and assisting in the designation of existing PCBs.

10 48. Further, Plaintiff discovered additional PCBs in connection with Plaintiff's planned  
11 relocation of the ground water treatment system. This discovery required Plaintiff to prepare a  
12 separate EPA cleanup application package for submission, approval, and implementation.

13 49. The University fraudulently concealed the EPA's involvement in the Project.  
14 Furthermore, the Subcontract did not contemplate the existence of PCBs at Building 5, or in the  
15 ground water treatment system relocation area. These undisclosed and concealed conditions caused  
16 Plaintiff to incur significant delays and added costs. To-date, the University has refused to  
17 acknowledge and/or address schedule impacts associated with the EPA clean-up application  
18 package, and has failed to address costs for delays associated with the discovery of undisclosed  
19 PCBs.

20 B. Radiological Contamination

21 50. Shortly after execution of the Subcontract, the University provided Plaintiff with a  
22 subsurface sampling report for the Project site, which Plaintiff is informed and believes was  
23 prepared for the University during pre-Subcontract negotiations between Plaintiff and the University  
24 in or around October 2014. The subsurface sampling report revealed possible radiological  
25 contamination at Building 16. This information directly contradicted the University's assertion in  
26 the RFP documents (i.e., Waste Management Plan and characterization reports) that radiological  
27 contamination was limited to the Building 5 area. Shockingly, the University withheld the  
28 subsurface sampling report from Plaintiff until after Plaintiff executed the fixed-price Subcontract

1 in an apparent effort to deceive Plaintiff, resulting in Plaintiff's submission of an artificially low  
2 Technical Proposal.

3 51. As the Project progressed, the significant extent of the University's  
4 misrepresentations regarding the presence of radiological contamination became clear.

5 52. As set forth more fully below, in or around April 2016, Plaintiff discovered  
6 radiological contamination in the areas surrounding Buildings 16/16A and 52/52A, despite the  
7 University's express representations that radiological contamination was confined to the Building 5  
8 area.

9 53. The existence of radiological contamination at Buildings 16/16A and 52/52A  
10 required Plaintiff to, among other things, perform extensive sampling and testing of potentially  
11 contaminated waste and soils to ascertain the nature and extent of radiological contamination. Based  
12 on the results of radiological sampling and testing, Plaintiff was required to prepare waste profiles  
13 and disposal plans for radiologically-contaminated materials and soils.

14 54. Further, Plaintiff is informed and believes that the University had failed to fully  
15 characterize the Project site, despite its fraudulent representation that it had performed an "extensive  
16 characterization campaign" of the site. Plaintiff is informed and believes that the University lacked  
17 sufficient data to enable it to establish appropriate "background" levels of radiation for purposes of  
18 evaluating potential radiological contamination. Accordingly, the University required Plaintiff to  
19 conduct extensive background sampling in the Buildings 16/16A and 52/52A areas. Furthermore,  
20 the discovery of radiological contamination at Buildings 16/16A and 52/52A subjected DMS' work  
21 to oversight by the University's Radiological Protection Group.

22 55. The existence of radiological contamination at Buildings 16/16A and 52/52A, and  
23 corresponding additional work and oversight, were not contemplated by the Subcontract, and caused  
24 Plaintiff to be delayed and to incur significant added costs.

25 56. Federal Acquisition Regulation ("FAR") 52.236-2, as incorporated by the  
26 Subcontract's General Provisions, provides that conditions that materially differ from the parties'  
27 contract "and cause an increase or decrease in the Contractor's cost of, or the time required for,  
28 performing any part of the work under [the] contract, whether or not changed as a result of the

1 conditions,” entitle the contractor to “an equitable adjustment,” and a written modification to the  
2 contract. The EPA oversight and unanticipated radiological contamination concealed and otherwise  
3 not disclosed by the University in the pre-Subcontract documents constitute differing site  
4 conditions, and Plaintiff is entitled to a Subcontract adjustment to account for added time and costs  
5 associated with these changes pursuant to FAR 52.236-2.

6 C. The University’s Abandonment of Subcontract Terms

7 57. During Plaintiff’s development of planning documentation and work packages  
8 required for issuance of a Notice to Proceed, the University violated the assumptions and obligations  
9 set forth in the Subcontract via the October 23, 2014 Proposal Assumptions – Revision 1.

10 58. Specifically, Plaintiff is informed and believes that the University regularly subjected  
11 Plaintiff’s document and planning submissions to multiple rounds of review by numerous  
12 organizations within the University, resulting in several versions and iterations of commentary from  
13 the University.

14 59. Moreover, Plaintiff is informed and believes that the University chose to engage a  
15 variety of Subject Matter Experts to review and approve each of Plaintiff’s planning and work  
16 package documents. The various Subject Matter Experts often disagreed and provided conflicting  
17 commentary and direction, resulting in multiple rounds of review and revision for each Project  
18 planning document and work package submitted by Plaintiff.

19 60. In their review of Plaintiff’s work plans, the University’s Subject Matter Experts not  
20 only delayed commencement of Plaintiff’s work in the field, but also added items to Plaintiff’s scope  
21 of work and attempted to change Plaintiffs’ technical approach to completing work pursuant to the  
22 Subcontract. These changes required Plaintiff to revise and resubmit its work plans for further  
23 review, comment, revision, and approval, significantly delaying the Project and unnecessarily  
24 adding costs.

25 61. Plaintiff is informed and believes that the University’s actions in this regard violated  
26 the Subcontract and negatively impacted Plaintiff’s costs and performance of its work under the  
27 Subcontract.

28 62. Additionally, the Subcontract incorporated Plaintiff’s plan - as set forth in Plaintiff’s

1 Technical Proposal and the October 30 Proposal Assumptions – Revision 1 - to treat all Building 5  
2 materials and soil as low level radiological waste or mixed low level waste by shipping said waste  
3 off-site to the Nevada National Security Site, rather than managing such waste on-site. This  
4 approach minimized risks associated with accidental releases of radiological material at an  
5 uncontrolled area. It also prevented any otherwise required sampling, segregation, and/or  
6 management of materials at the Project site, thereby significantly reducing costs and time associated  
7 with removal and remediation of the Building 5 area.

8 63. Despite Plaintiff's clearly stated approach to the Building 5 work, the University  
9 routinely directed Plaintiff to sample, segregate, and manage Building 5 soil for potential reuse or  
10 disposal as "clean" soil.

11 64. Plaintiff is informed and believes that the University's flagrant disregard for the  
12 Subcontract's requirements, including Plaintiff's approach to performing the Building 5 work, was  
13 motivated by a desire on the part of the University to reduce its costs by taking advantage of the  
14 Subcontract's alternative unit pricing scheme. The University's interference with Plaintiff's means  
15 and methods constituted a material breach of the Subcontract, and directly caused damage to  
16 Plaintiff in the form of increased time and costs of performing the Building 5 work.

17 **THE UNIVERSITY'S WRONGFUL TERMINATION OF PLAINTIFF FOR CAUSE**

18 65. In March 2016, Plaintiff encountered potentially radiologically-contaminated  
19 underground piping and soil in the areas surrounding Buildings 16/16A and 52/52A. Based on the  
20 University's representations during the RFP and Subcontract negotiation process, the Subcontract  
21 did not contemplate removing and remediating radiologically-contaminated materials and soils from  
22 areas other than Building 5. Accordingly, on or about March 31, 2016, Plaintiff submitted to the  
23 University Changed Conditions Request # 15, pursuant to Clause 13 of the Subcontract's General  
24 Provisions ("Change Order Adjustments"). Changed Conditions Request # 15 described the  
25 differing condition (i.e., unanticipated and potentially-contaminated materials) and addressed costs  
26 associated with excavating the potentially contaminated piping and soil in the Building 16/16A and  
27 52/52A areas.

28 66. Despite the requirements set forth in FAR 52.236-2, as incorporated by the

1 Subcontract's General Provisions, that the University promptly investigate differing site conditions,  
2 such as those described in Change Condition Request # 15, the University failed to respond to  
3 Plaintiff's Changed Conditions Request # 15 until May 31, 2016, when it rejected Plaintiff's request,  
4 explaining that "[t]he University considers this as work outside the scope of the Subcontract and has  
5 no intent to incorporate this scope into the Subcontract at this time."

6 67. Again, on or about April 7, 2016, while conducting soil samples in the Building  
7 16/16A and 52/52A areas, Plaintiff discovered radiological contamination at Building 16. Plaintiff  
8 promptly notified the University's Radiological Protection Group of its discovery, and requested  
9 authorization to post warnings indicating that the area surrounding Buildings 5, 16/16A, and 52/52A  
10 contained underground radiological contamination.

11 68. Shortly thereafter, on or about April 12, 2016, Plaintiff submitted to the University  
12 Changed Condition Request # 21, explaining its discovery, reiterating its request to post warning  
13 signs, and explaining the significant impact of unanticipated radiological contamination on  
14 Plaintiff's performance of work in the Building 16/16A and 52/52A areas, which were represented  
15 and understood to be free from radiological contamination based on the allegedly "extensive  
16 characterization campaign," previously obtained by the University.

17 69. Changed Condition Request # 21 explained that the presence of this unanticipated  
18 radiological contamination would require Plaintiff to modify the existing work packages for  
19 Buildings 16/16A, and 52/52A, as Plaintiff had planned to dispose of all materials and soil from  
20 these areas at California landfills, which are unable to accept radiologically-contaminated materials  
21 and soils. As such, Plaintiff's existing work plans required modification to (1) include radiological  
22 survey plans, (2) incorporate radiological training requirements for its labor force, (3) add  
23 radiological control technician staff and instrumentation, and (4) develop disposal plans to enable  
24 the radiologically-contaminated soil and materials to be shipped off-site to Nevada National  
25 Security Site (which is capable of accepting low level radiological waste). Shipment of  
26 radiologically-contaminated soils and materials further required the preparation of revised waste  
27 profiles to account for and describe radiological contamination.

28 70. Rather than promptly investigating the conditions described in Changed Condition



1 Request # 21, enabling Plaintiff to commence sampling and testing required for preparation of  
2 revised waste profiles, and notwithstanding the requirements of FAR 52.236-2, the University failed  
3 to respond to Changed Condition Request # 21 until August 30, 2016.

4 71. Following Plaintiff's submission of Changed Condition Request # 21 in April 2016,  
5 Plaintiff was unable to progress work on Buildings 16/16A and 52/52A without clear direction from  
6 the University.

7 72. Plaintiff is informed and believes that in or around June 2016, the University's  
8 Radiological Protection Group encountered additional radiological contamination in the Building  
9 16 and 52 areas while performing underground utility work. Plaintiff is further informed and  
10 believes that based on this discovery, the Radiological Protection Group advised the University that  
11 sampling and testing of the soils and material surrounding Buildings 16/16A and 52/52A was  
12 required to confirm that these soils and materials were free from radiological contamination, thus  
13 permitting disposal at California landfills.

14 73. Plaintiff is informed and believes that based upon the Radiological Protection  
15 Group's discovery, the University issued Directed Change # 4 on June 29, 2016. By Directed  
16 Change # 4, the University directed Plaintiff to conduct radiological sampling at the Building  
17 16/16A and 52/52A areas to assist in waste management and radiological determinations.

18 74. Further, Directed Change # 4 required Plaintiff to perform additional sampling for  
19 purposes of establishing background levels of radiation at the site ("background sampling").

20 75. Plaintiff is informed and believes that the University will treat soils and waste as  
21 radiologically contaminated only to the extent that such soils exceed permissible levels of radiation  
22 existing in surrounding ("background") materials and soil. Conversely, to the extent tested soils  
23 and materials are "indistinguishable" from background levels, the University will not require such  
24 soils to be removed from the site but may be retained on-site.

25 76. Plaintiff is informed and believes that the University's Environmental Waste  
26 Department and Radiation Protection Department prepared a Technical Note, and several  
27 amendments thereto, which provided "decision guidance for the Project in order to determine if  
28 potentially-impacted soil may be released based on gross alpha or gross beta analyses." The

1 Technical Note explained that “all material that is intended for release, including soil that is intended  
2 for disposal in Class 1, 2, or 3 landfills, must be determined to be free from anthropomorphic  
3 radiological contamination prior to release by demonstrating that any potential radiological  
4 contamination is indistinguishable from background (IFB).” The Technical Note also identified  
5 “critical limits” for accepting results as indistinguishable from background (i.e., “non-radioactive  
6 for regulatory purposes.”)

7 77. Plaintiff is informed and believes that the University lacked sufficient information to  
8 determine the nature and extent of any radiological contamination present and to evaluate  
9 background levels of radiation at the Project site. Accordingly, by Directed Change # 4, the  
10 University directed Plaintiff to perform “background sampling” in an effort to fully characterize the  
11 Building 16/16A and 52/52A areas, well beyond the Subcontract’s Scope of Work.

12 78. At the University’s direction, Plaintiff performed radiological and background  
13 sampling, per Directed Change # 4, between July 6, 2016 and August 3, 2016, for the University’s  
14 review and evaluation.

15 79. Of course, the sampling required by Directed Change 4 was outside of the scope of  
16 the Subcontract and resulted in significant delays and additional costs. Accordingly, and based on  
17 the impacts experienced throughout the Project, and anticipated future impacts, Plaintiff submitted  
18 to the University a Request for Equitable Adjustment (“REA”) on July 29, 2016.

19 80. In its REA, Plaintiff identified “concerns and obstacles associated with initiating  
20 performance” at Building 16/16A and 52/52A based on the discovery of unexpected, and  
21 undisclosed, radiological contamination in these areas. As explained in the REA, the discovery of  
22 radiological contamination at Buildings 16/16A and 52/52A was expected to cause severe delays to  
23 the Project. While Plaintiff was unable to provide a date-certain for Project completion – in the face  
24 of the results of further testing, per Directed Change # 4, and many unknowns at the time – it  
25 provided the University with a forecast schedule that was as realistic as possible, reflecting a  
26 completion date in December 2017. This delayed completion date was justified based on the extent  
27 and timing of additional work required as a result of unanticipated radiological contamination.

28 81. Once received at the end of August 2016, the preliminary sampling results made

1 clear that radiological waste existed in the Building 16/16A and 52/52A areas, necessitating disposal  
2 at the Nevada National Security Site, rather than at California landfills, as planned by Plaintiff.

3 82. In sum, the discovery of previously undisclosed radiological contamination required  
4 Plaintiff to (1) gather extensive samples in the Buildings 16/16A and 52/52A areas, (2) obtain  
5 validation of all data collected, (3) prepare multiple waste profiles for submission to and approval  
6 by the Nevada National Security Site (this was estimated to take six (6) to eight (8) months), (4)  
7 revise and resubmit the EPA clean-up application plan for the Project, which had been submitted  
8 and approved in May 2016, before Plaintiff had confirmed the existence of radiological  
9 contamination outside of the Building 5 area, and (5) implement the clean-up/disposal measures per  
10 direction received from the University, the EPA, and the Nevada National Security Site.

11 83. Unless and until the Nevada National Security Site and, eventually, the EPA  
12 approved the clean-up and disposal procedures, Plaintiff could not perform work in the Building  
13 16/16A and 52/52A areas.

14 84. Plaintiff is informed and believes that, the University was unable to reach a decision,  
15 internally, with regard to treatment of radiologically-contaminated soils (i.e., whether soils should  
16 be kept on-site and reused, or shipped off-site for disposal), further delaying and complicating  
17 matters. Absent relevant information on background levels, various departments within the  
18 University, and the DOE's Berkeley Site Office, were unable to come to a consensus regarding  
19 treatment and disposition of radiologically contaminated soils.

20 85. Additionally, even after Plaintiff conducted background sampling, Plaintiff is  
21 informed and believes that the University's departments were, in the late summer and fall of 2016,  
22 unable to agree regarding appropriate levels of background radiation, as evidenced by the utilization  
23 of different criteria by other, concurrent, projects at LBNL.

24 86. On August 15, 2016, in the absence of any direction from the University to the  
25 contrary, Plaintiff notified the University that it was proceeding with its work planning for Building  
26 52 under the "stated radiological threshold values" (i.e., acceptable background levels) as defined  
27 in the Project's Soil Management Plan. Plaintiff further advised that if the University elected to  
28 increase or change applicable background levels, Plaintiff would need time to evaluate and re-plan

1 excavations. These uncertainties impeded Plaintiff's ability to prepare a viable work package for  
2 the Buildings 16/16A and 52/52A work.

3 87. Pending receipt of additional information from the University, following the  
4 University's review of the background sampling data, Plaintiff continued its work planning efforts  
5 at Building 52, per the background levels identified in the Project's Soil Management Plan.

6 88. Plaintiff's work planning efforts included, among other things, submission of waste  
7 profiles to various off-site disposal facilities. However, the University directed Plaintiff not to  
8 submit any analytical data (i.e., waste profiles) to waste management facilities without the  
9 University's prior explicit written concurrence. This further delayed and disrupted Plaintiff's work.

10 89. Of course, in the event that the University elected to increase background levels,  
11 excavated soils could be deemed indistinguishable from background, and data pertaining to  
12 radiological contamination would not need to be provided to off-site disposal facilities.

13 90. Plaintiff is informed and believes that the University engaged in internal debate  
14 throughout the summer and fall of 2016 regarding appropriate and applicable background levels,  
15 and the release of radiologically-contaminated soil. Meanwhile, Plaintiff was caught in the middle,  
16 without direction or guidance, and unable to plan its work.

17 91. The University was fully apprised of Plaintiff's concerns and the impacts caused by  
18 the discovery of radiological contamination at Buildings 16/16A and 52/52A. Yet, the University  
19 continued to insist in correspondence that Plaintiff progress work at Buildings 16/16A and 52/52A.  
20 However, the University refused to raise applicable background levels, or permit Plaintiff to utilize  
21 alternative methods for evaluating radiologically-contaminated waste and soil.

22 92. Instead, the University attempted to account for uncertainties regarding the presence  
23 of radiological contamination by directing Plaintiff to prepare a work package for Building 52  
24 containing "if/then" statements, identifying multiple, alternative, manners of performing the work  
25 at Building 52, depending on the existence of radiological contamination. The preparation and  
26 execution of such a "hypothetical" work package was outside the scope of the Subcontract, and the  
27 University failed to issue a Subcontract modification for Plaintiff's performance of this work  
28 planning.

1           93. At the very time Plaintiff was prevented from moving forward with its work,  
2 incredibly, on September 15, 2016, the University issued a Notice to Plaintiff to cure default or be  
3 terminated for cause, asserting that Plaintiff had, among other things, failed to “create and maintain  
4 a logical, reasonable, and responsible schedule for completion,” and had failed to progress work at  
5 Buildings 52/52A.

6           94. Plaintiff responded to the assertions in the University’s termination notice and  
7 explained, again, that “the significant change to the project and the complexity of the changes . . .  
8 are so drastic that it is difficult to accurately reflect how the schedule has changed.”

9           95. Despite the substantial changes to the Project scope, and notwithstanding the  
10 uncertainties surrounding disposition of radiologically-contaminated waste, the University  
11 continued to insist on Plaintiff’s progression of work that could not reasonably be progressed, and  
12 continued to demand that Plaintiff submit a recovery schedule reflecting an earlier completion date  
13 than could reasonably be agreed to by Plaintiff in light of the significant delays, changes, and  
14 continued uncertainties surrounding radiological contamination at Buildings 16/16A and 52/52A.

15           96. Rather than work to overcome these uncertainties, created and exacerbated, in part,  
16 by the University deceptive behavior, the University elected to terminate Plaintiff, directing Plaintiff  
17 to fully demobilize from the Project.

18           97. On October 20, 2016, the University and Plaintiff executed a “Demob Punch List”  
19 which required Plaintiff to “[p]rovide badges, parking passes, keys,” and to “pack office and leave”  
20 by October 21, 2016. A true and correct copy of the “Demob Punch List” is attached hereto as  
21 Exhibit “B” and is incorporated herein by this reference.

22           98. Shortly thereafter, on October 21, 2016, the University’s Technical Representative,  
23 Ted Mankowski, sent Plaintiff an email specifying which material and equipment the University  
24 planned to retain, following Plaintiff’s termination.

25           99. Plaintiff complied with the University’s direction and demobilized from the Project.

26           100. Weeks after Plaintiff demobilized from the Project, however, the University  
27 contradicted itself and directed Plaintiff to re-mobilize to the Project. When Plaintiff requested that  
28 the University pay for this remobilization, the University declared Plaintiff to be in default under

1 the Subcontract and, on November 16, 2016, the University delivered to Plaintiff a Notice of  
2 Termination for Plaintiff's alleged default.

3 101. As set forth above, Plaintiff was prevented from timely performing work due to  
4 impacts arising out of the EPA's environmental oversight, previously concealed by the University  
5 during Subcontract negotiations, the discovery of unanticipated and undisclosed radiological  
6 contamination, the University's excessive and iterative reviews of documents pertaining to  
7 Plaintiff's work, and the vastly increased Project scope. Moreover, Plaintiff had been terminated  
8 and demobilized from the Project three weeks before the University delivered its Notice of  
9 Termination for Plaintiff's alleged default.

10 102. The University dramatically increased the Project's scope and required Plaintiff to  
11 perform work of a substantially different nature than the work contemplated by the Subcontract.  
12 Based on the University's failure to abide by the Subcontract's terms, and its improper  
13 administration of the Subcontract, Plaintiff experienced damages greater than the original lump sum  
14 of the Subcontract. Based on the foregoing, the University's characterization of Plaintiff's  
15 termination as one for default is deceptive and wrong.

16 103. As a direct and proximate result of the foregoing, Plaintiff has suffered damages for,  
17 among other things, the costs of extra work, time delays and impacts, lost profits, lost productivity,  
18 increased administrative costs, interest, penalties, Project costs, attorney's fees, and other damages  
19 and claim items. Further, based on the University's wrongful termination of Plaintiff for default,  
20 and pursuant to FAR 52.249-10(c), as incorporated by the General Provisions to the Subcontract,  
21 the rights and obligations of the parties are the same as if the termination had been issued for the  
22 convenience of the Government. Therefore, Plaintiff is entitled to recover its reasonable actual costs  
23 of the work, plus overhead and profit for the Project, and claim preparation costs under FAR 52.249-  
24 2.

25 **FIRST CAUSE OF ACTION**

26 **(Breach of Contract Against the University and Does 1 through 50)**

27 104. Plaintiff realleges and incorporates paragraphs 1 through 103 as though set forth in  
28 full.

1           105. The Subcontract obligated the University and Does 1 through 50, and each of them,  
2 to fully perform all of their obligations under the Contract in accordance with the terms, conditions  
3 and covenants thereof, and in accordance with governing law, industry standards, customs and  
4 practices.

5           106. Plaintiff has fully performed all conditions, covenants, promises required to be  
6 performed on its part under the Subcontract, except as waived or excused by the conduct of the  
7 University and Does 1 through 50, and each of them.

8           107. As set forth herein, the University and Does 1 through 50, and each of them, acted  
9 unreasonably and in breach of the Subcontract and applicable statutory and legal requirements by  
10 various acts and omissions as alleged herein.

11           108. Accordingly, the University and Does 1 through 50, and each of them, have breached  
12 the terms, covenants, promises, obligations, provisions, and warranties of the Subcontract by various  
13 acts and omissions including, without limitation, the following,

14                   a. Failing and refusing to make payments and issue time extensions for  
15 completed work, changes, alterations, extra work, differing conditions and other interferences,  
16 impacts and delays, and Subcontract earnings as required by the Subcontract and statutory law;

17                   b. Failing and refusing to issue Subcontract modifications and make payments  
18 for delays, changes, alterations, differing site conditions, and other extra work;

19                   c. Concealing, withholding, and fraudulently misrepresenting information and  
20 materials pertaining to the Project;

21                   d. Altering the scope of work, means and methods of performance of the work,  
22 and the nature of the work under the Subcontract without compensating Plaintiff for such alterations;

23                   e. Failing to provide complete and accurate information related to the Project  
24 site, including complete and accurate radiological and environmental reports and information;

25                   f. Providing documents that contained numerous errors, inaccuracies, and  
26 misstatements, and undisclosed and/or incorrectly identified site conditions, which, among other  
27 things, caused delays and substantial changes to Plaintiff's work under the Subcontract, and which  
28 required the preparation and submission of Subcontract modifications by Plaintiff and resulted in

1 substantial and material alterations of the scope of Plaintiff's work, means and methods of  
2 construction, and time for performance;

3 g. Providing affirmations of fact, descriptions of the physical characteristics of  
4 the Project site, and the permissible means and methods of construction that were, in fact, false and  
5 inaccurate;

6 h. Failing and refusing to promptly investigate, make determinations, and issue  
7 Subcontract modifications for differing site conditions and extra work;

8 i. Delaying and disrupting the work;

9 j. Failing and refusing to properly and equitably administer the Contract;

10 k. Failing and refusing to properly respond to Changed Conditions  
11 Notifications, Change Order Requests, and Requests for Equitable Adjustments, including  
12 Plaintiff's REA;

13 l. Failing and refusing to administer and perform its obligations in a manner  
14 that is consistent with the Subcontract requirements, the duty of due care, industry standards,  
15 customs, and practices, governing law, and the implied covenant of good faith and fair dealing; and

16 m. Improperly and wrongfully terminating Plaintiff for alleged default under the  
17 Subcontract.

18 109. Implicit in the Subcontract is a covenant of good faith and fair dealing obligating the  
19 parties to act towards each other in good faith, to deal fairly with one another, to make all material  
20 disclosures, and not to do anything that might deprive the other of the expectations and benefits of  
21 the Subcontract and obligating each party to do everything that the Subcontract presupposes to  
22 accomplish their purposes. For the reasons stated herein, the University and Does 1 through 50, and  
23 each of them, have breached the implied covenant of good faith and fair dealing.

24 110. As a direct and proximate result of the foregoing, Plaintiff has suffered damages in  
25 an amount to conform to proof at the time of trial, but not less than \$13 million, plus attorneys' and  
26 experts' fees, and interest.

27 111. Pursuant to FAR 52.249-2, Plaintiff is entitled to recover its reasonable costs plus  
28 overhead, profit markup, and costs incurred in preparing its claim.



1 PRAYER FOR RELIEF ON ALL CAUSES OF ACTION

2 WHEREFORE, Plaintiff prays for judgment against the University and Does 1 through 50,  
3 and each of them, as follows:

- 4 1. For damages in an amount to conform to proof at the time of trial, but in an amount  
5 in excess of \$13 million;
- 6 2. For interest at the legal rate allowed by law;
- 7 3. For costs as provided by FAR 52.249-2 and for costs of suit;
- 8 4. For reasonable attorneys' fees; and
- 9 5. For such other and further relief as the Court deems just and proper.
- 10
- 11

12 Dated: May 30, 2017

RUTAN & TUCKER, LLP  
WILLIAM T. ELIOPOULOS  
HEATHER HERD  
CARRIE MAGINTOSH

13  
14  
15 By: 

16 William T. Eliopoulos  
17 Attorneys for Plaintiff  
18 Dynamic Management Solutions, LLC  
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24  
25  
26  
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28

EXHIBIT A

**CONSTRUCTION SUBCONTRACT**

NO. 7209030



The Regents of the University of California  
 Lawrence Berkeley National Laboratory  
 One Cyclotron Road  
 Berkeley, CA 94720

**SUBCONTRACTOR:**

Dynamic Management Solutions, LLC  
 Attention: Raoul Mebane  
 2750 Salk Avenue Suite 104  
 Richland, WA 99354  
 Phone: 509 539 6470 Fax: 509 375 3555  
 E-Mail: rmebane@NorthStar.com

**University Procurement Representative:**

Name: Sharon Ropes  
 Title: Principal Subcontracts Administrator  
 Phone: (510) 486-6932  
 Fax: (510) 486-5115  
 E-Mail: SARopes@lbl.gov

**Introduction**

This is a Fixed Price/Fixed Unit Price Construction Subcontract (hereinafter "Subcontract") for Old Town Phase I Deactivation and Demolition (D&D) Construction Services for the Lawrence Berkeley National Laboratory (hereinafter "LBNL"), as further described herein.

This Subcontract is between The Regents of the University of California, (hereinafter "University") and the party identified above as the "Subcontractor".

This Subcontract is issued under Prime Contract No. DE-AC02-05CH11231 between the University and the U.S. Department of Energy (hereinafter "DOE") for the management and operation of the LBNL and the performance of research and related work.

**Agreement**

The parties agree to perform their respective obligations in accordance with the terms, conditions, and provisions of the attached SCHEDULE OF ARTICLES and the documents referenced or incorporated therein, which together with this Signature Page shall collectively constitute the entire agreement and shall supersede all prior negotiations, representations, or agreements, whether verbal or written.

**DYNAMIC MANAGEMENT  
 SOLUTIONS, LLC**

**THE REGENTS OF THE  
 UNIVERSITY OF CALIFORNIA**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Salina Savage*  
 SALINA SAVAGE  
 member / President  
 12-1-14

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*Becky Cornett*  
 Becky Cornett  
 Procurement and Property Manager  
 12-1-14

## SCHEDULE OF ARTICLES

### ARTICLE 1 – SCOPE OF WORK

- A. Description: The Subcontractor shall perform all work for the Old Town Phase I Deactivation and Demolition (D&D) Construction Services, in accordance with the Statement of work dated October 7, 2014 and this Subcontract. The worksite is located at One Cyclotron Road, Berkeley CA.

The work shall conform to applicable sections of the LBNL Facilities Division's *Construction Details and Design Guidelines*, available at: <http://fac.lbl.gov/Projects/CDDG Home/>, as directed by the University Technical Representative.

The Subcontractor agrees to perform additional work arising from changes ordered by the University pursuant to the *Changes* clause of the General Provisions.

B. Required Documentation

1. The following documents shall be submitted to the University Procurement Representative no later than 10 days after the date of award of the Subcontract. Acceptable documents must be submitted and a Notice to Proceed must be issued before any work may commence at the worksite.
  - Site Specific Safety Plan, Injury and Illness Prevention Program (IIPP), and Job Hazards Analysis (JHA) Checklist (as required by the LBNL EH&S Construction Safety Group)
  - Statement and Acknowledgment Form (SF 1413)
  - Insurance Certificate and Endorsements
  - Performance Bond (per the *Performance Bond* clause of the General Provisions)
  - Payment Bond (per the *Payment Bond* clause of the General Provisions)
  - Workplace Substance Abuse Program Plan
  - Project Quality Assurance Plan
2. The Subcontractor shall complete and submit each of the following documents to the University as required by this Subcontract.
  - Application for Payment
  - Weekly Payroll Information
  - Assignment and Release
3. The Subcontractor shall submit other reports with respect to the Subcontractor's activities under this Subcontract, including reports on use of EPA-designated items and Government-owned property, as required by this Subcontract or as the University may require from time to time.

C. Davis-Bacon and Related Requirements

1. The construction work is subject to the Davis-Bacon Act and related labor standard clauses identified in the General Provisions (FAR Clauses 52.222-6 through 52.22-15). The Subcontractor shall pay its employees at least the minimum wages established by the General Wage Determination of the U.S. Department of Labor identified in this Subcontract and shall comply with all other related requirements. The Wage Determination and the Davis-Bacon Poster (WH-1321) shall be posted at all times by the Subcontractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers. The Davis-Bacon Poster is available at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>.
2. The Subcontractor shall submit a completed and signed *Statement and Acknowledgment Form* (SF 1413) for itself and each lower tier subcontractor providing construction labor under this Subcontract.
3. The Subcontractor shall also furnish weekly a payroll statement for all laborers and mechanics performing work at the worksite during the preceding week, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. The required weekly payroll information shall be submitted electronically utilizing LBNL's LCPTracker© System, which is available at <https://lcptracker.net/lcp/login.aspx>, unless otherwise authorized by the University Procurement Representative. Registration should be coordinated with the University Procurement Representative.

**ARTICLE 2 – WORK SCHEDULE**

- A. Schedule. The Subcontractor shall fully complete the work within 15 months after fully executed Subcontract. The University will issue the Notice to Proceed upon acceptance of the documents identified in Paragraph B of Article 1 - Scope of Work. Pending issuance of the Notice to Proceed, the Subcontractor shall perform other tasks not involving work at the worksite, as authorized or required by the Subcontract.

It is agreed that time is of the essence for this Subcontract and definite and certain lengths of time have been fixed for performance. Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure completion thereof within the time specified. The date of beginning, rate of progress, and time for completion are reasonable and essential conditions of this Subcontract. No act of forbearance by the University or extension by the University of the time for performance of this Subcontract shall in any way constitute or operate as a waiver of or excuse for any future default by the Subcontractor. No such action by the University shall constitute a waiver, release, or relinquishment of any of the rights or power herein conferred upon the University.

- B. Liquidated Damages. If the Subcontractor neglects, refuses or fails fully to complete the work within the time specified, whether or not the Subcontractor's right to proceed is terminated under the clause in the General Provisions entitled *Default (Fixed Price Construction)*, subject to extensions of time duly granted in the manner and for the causes specified in said clause, the

Subcontractor and its sureties shall be liable to the University for liquidated and ascertained damages for each calendar day that the work remains incomplete beyond the time herein fixed for the completion, in the amount of \$2,000.00 per calendar day.

It is hereby expressly and mutually agreed that it would be impracticable and extremely difficult to fix the actual damage which would or will be suffered in the event that the Subcontractor should fail to fully to complete the work within the time specified, and it is further agreed that said amount herein provided for said liquidated and ascertained damages is reasonable and proper. The amount so charged may be deducted by the University from any amounts which otherwise become payable to the Subcontractor.

- C. Delays and Suspensions. The Subcontractor agrees to bear the risk of delays to completion of the work, and that it has entered into this Subcontract with full knowledge of this risk. Adjustments will be made to the work schedule for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Subcontractor, as described in the *Default* clause of the General Provisions (FAR 52.249-10), only under the following conditions:
1. The progress of the work is in accordance with the Subcontract work schedule at the commencement of the event giving rise to the delay.
  2. The event causing the delay causes a delay in completing the work beyond the completion date established by the Notice to Proceed.

Any adjustment of the fixed price of this Subcontract as the result of a suspension of work for the University's convenience, pursuant to the *Suspension of Work* clause of the General Provisions (FAR 52.242-14), shall not exceed \$0.00 per day for each day such compensation is payable.

### ARTICLE 3 – PRICE AND PAYMENT PROVISIONS

A. Fixed Prices

The University will pay the Subcontractor for the performance of this Subcontract a total fixed Subcontract price of \$7,435,529.00.

A Safety Allowance of \$30,000.00 is contemplated, and will be unilaterally added to the firm fixed price at the discretion of the University, which will be allocated, by mutual agreement of the University Technical Representative and the Subcontractor, to the workers as a direct incentive to safely perform the work.

This Subcontract price shall constitute full payment for the work, materials, services and other items required for performance of this Subcontract, and includes all applicable federal, state, and local taxes, duties and all of the Subcontractor's other obligations related to such work.

Any machinery or equipment purchased hereunder are for resale and are not subject to California sales tax, per the University's California State Resale Permit No. SR-CH 21-835970, with title thereto passing to the Government per the *Government Property* clause of the General Provisions prior to its use.

The University of California State Resale Permit No. SR-CH 21-835970 for LBNL is available at: <http://procurement.lbl.gov/supplier-forms/>.

B. Unit and Option Prices

1. Unit Prices

**Variation from 1,450 tons of contaminated (non-Rad) soil remediation waste. (\$/ton)**

Unit price/ton for additional quantities more than 1,523 tons	\$126
Unit price/ton for reduced quantities less than 1,377 tons	(\$56)

**Variation from 1,400 tons of low-level radioactive soil remediation waste. (\$/ton)**

Unit price/ton for additional quantities more than 1,470 tons	\$347
Unit price/ton for reduced quantities less than 1,330 tons	(\$100)

**Variations from 1,025 tons of contaminated (TSCA Hazardous - non- Rad) soil remediation. (\$/ton)**

Unit price/ton for additional quantities more than 1,076 tons	\$369
Unit price/ton for reduced quantities less than 973 tons	(\$102)

**Variations from 3,900 tons of soil for additional excavation clean imported backfill, placement and compaction. (\$/ton)**

Unit price/ton for additional quantities more than 4,095 tons	\$32
Unit price/ton for reduced quantities less than 3,705 tons	(\$26)

**Increase from 0 cubic feet for mixed low-level radioactive/ hazardous waste quantities. (\$/cubic foot)**

Unit price/cu. ft. for additional quantities more than 0 cubic feet	\$214
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2. Option Prices

The University may exercise any or all of the following options within the life of this Subcontract. The prices include all costs associated with each option, such as labor, materials, equipment, support functions, management, fees, G&A, and profit.

Vibration Restriction	(\$25,680)
Demobilization/Remobilization	\$177,927

C. Payments

1. Progress Payments

The University will make progress payments at the end of each calendar month or as soon thereafter as practicable, or at more frequent intervals, as determined by the University, based on estimates of the progress of the work performed by the Subcontractor and approved by the University.

The Subcontractor shall email a completed *Application for Payment* for the period directly to the LBNL Accounts Payable Office at [APIInvoice@lbl.gov](mailto:APIInvoice@lbl.gov), with copies to [SARopes@lbl.gov](mailto:SARopes@lbl.gov) and [RDCronin@lbl.gov](mailto:RDCronin@lbl.gov). The "subject" line of the email shall state the Subcontractor's name and the Subcontract number.

If unable to submit these documents by email, the Subcontractor may submit them by mail to the following address:

Lawrence Berkeley National Laboratory  
Accounts Payable Office  
Subcontract No. 7209030  
One Cyclotron Road, M/S 971-AP  
Berkeley, CA 94720

With copies to:

Lawrence Berkeley National Laboratory  
Sharon Ropes, M/S 76-225  
and  
Robert Cronin, M/S 74-225  
One Cyclotron Road  
Berkeley, CA 94720

If requested, the Subcontractor shall also submit receipts or other vouchers showing its payments for material and labor to its subcontractors. The *Application for Payment* shall include all information required by the form. The Subcontractor's estimates must be reasonable and exclude all amounts for materials to which Subcontractor has not acquired title.

As part of a progress payment, the University may authorize payment for material delivered on the site and preparatory work done. Payment for material delivered to the Subcontractor at locations other than the site may also be allowed if:

- a. Material is delivered to a remote location which is specifically authorized by this Subcontract; and
- b. The Subcontractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Subcontract.

2. Certification for Progress Payments

Along with each request for a progress payment the Subcontractor shall furnish the following certification, or payment will not be made:

"I hereby certify, to the best of my knowledge and belief, that:

The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Subcontract;

Payments to lower-tier subcontractors and suppliers have been made from previous payments received under the Subcontract, and timely payments will be made from the



proceeds of the payment covered by this certification, in accordance with the lower-tier subcontracts; and

This request for progress payments does not include any amounts which will be withheld or retained from a lower-tier subcontractor or supplier in accordance with the terms and conditions of the lower-tier subcontract."

3. Progress Payment Terms. Payment terms for progress payments shall be Net 15 days. For inquiries about the status of a progress payment, call (510) 486-6954.

4. Retention

In making such progress payments, 10 percent thereof may be retained until final completion and acceptance of all work covered by the Subcontract. On completion and acceptance of any separate building, public work, or other division of the Subcontract on which the price is stated separately in the Subcontract, payment may be made in full, including retained percentages thereon, less authorized deductions.

5. Withholding of Payment

The University may withhold progress payment to the Subcontractor to the extent necessary to protect the University upon the occurrence of any one or more of the following events.

- a. Any failure of the Subcontractor to comply fully with any requirement of this Subcontract including, but not limited to, the following.
  - (1) Failure to adhere to, or recover to, the proposed construction schedule.
  - (2) Failure to make prompt payment to lower tier subcontractors for labor, materials, or services related to the work for which the Subcontractor has been paid by the University.
  - (3) Failure to rectify defective, omitted, non-conforming, or unauthorized work.
- b. The filing, delivery, or recording of any claim, lien, stop notice, or similar action against the University or the work.
- c. Any damage caused to a third party by the Subcontractor by reason of negligent acts of the Subcontractor where such acts are related to the work under this Subcontract.

The University reserves the right to determine the amount and degree of withholding, provided that the withholding shall not be unreasonable. The University will pay withheld amounts promptly upon removal of the grounds for such withholding.

When the work is substantially complete, the University may retain from previously withheld amounts or future payments an amount the University considers adequate for protection of the University until final payment is made under this Subcontract, and will release to the Subcontractor all the remaining withheld funds.

6. Transfer of Title to the Government

All materials and work covered by progress payments shall thereupon become the property of the Government, but this provision shall not be construed as relieving the Subcontractor from the sole responsibility for all materials and work upon which payments have been made, or the restoration of payments for any lost, stolen, damaged or destroyed work, or work otherwise not accepted under this Subcontract, or as a waiver of the right of the University or the Government to require the fulfillment of all of the terms of the Subcontract. The Subcontractor shall take whatever action is necessary to protect and establish said Government title to all materials and work covered by progress payments made hereunder.

7. Final Payment

Subject to the terms hereof, final payment shall be made 35 calendar days after the recording with the County of the Notice of Completion for the work under this Subcontract. For inquiries about the status of the final payment, call (510) 486-6954. The University will make the final payment under this Subcontract, including any retention or withhold, after:

- a. Final completion and acceptance of all work;
- b. The recording by the County of the Notice of Completion for the work;
- c. Presentation of a properly executed voucher; and
- d. Presentation of a completed Assignment and Release for the total fixed price of this Subcontract, signed by the Subcontractor and any assignees, using the form incorporated as a part of this Subcontract.

**ARTICLE 4 – SUBCONTRACT ADMINISTRATION**

- A. University Procurement Representative. The designated University Procurement Representative for this Subcontract is the person authorized to make changes in the requirements of this Subcontract or make modifications to this Subcontract, including changes or modifications to the work. The Subcontractor shall submit all documents, notices, and requests for approval required by this Subcontract to the University Procurement Representative at the email address indicated on the signature page or at the following mail address:

Lawrence Berkeley National Laboratory  
One Cyclotron Road M/S 76-225  
Berkeley, CA 94720

Any notices and approvals required by this Subcontract from the University to the Subcontractor shall be issued by the Procurement Representative.

- B. University Technical Representative. Ted Mankowski is the University Technical Representative for this Subcontract (also called Project Manager). The University Technical Representative is the person designated to monitor the Subcontract work and to interpret and clarify the technical requirements, but may not modify the terms of this Subcontract. The University Technical Representative may also authorize changes or additional work by means of a Field Order with a value of \$25,000.00 or less. If the cost will exceed this amount, changes or additional work can only be authorized by the University Procurement Representative by a Subcontract Modification.

- C. Closeout. The Subcontractor shall, as a condition of full payment, assist the University in accomplishing the administrative closeout of this Subcontract after the completion of performance, including, as necessary or required, the furnishing of documentation and reports, the disposition of property, the disclosure of any inventions, the execution of any required documents, the performance of any audits, and the settlement of any interim or disallowed costs.

#### ARTICLE 5 – SAFETY-RELATED REQUIREMENTS

- A. Notice to Proceed. Work may not commence at the worksite until the Subcontractor submits an acceptable Site Specific Safety Plan, Injury and Illness Prevention Program (IIPP), or Job Hazards Analysis (JHA) Checklist, as required by the LBNL EH&S Construction Safety Group, and the University Procurement Representative; issues a written Notice to Proceed. The Subcontractor may proceed with all other work authorized or required by the Subcontract in preparation for performance at the worksite.
- B. General. The Subcontractor shall comply with DOE Acquisition Regulation 970.5223-1, *Integration of Environment, Safety, and Health into Work Planning and Execution*, and all environment, health, and safety requirements, training, and associated safety documents referenced, attached, or incorporated to this Subcontract, including any incorporated safety related documents submitted by the Subcontractor and reviewed and accepted by the University. The Subcontractor shall also comply with, and assist the University and the DOE in complying with the environment, health, and safety requirements identified in, or applicable to, this Subcontract.
- C. Safety Standards and Testing; Electrical Device Certification Requirement. The materials, equipment, tools, and supplies furnished or used by the Subcontractor shall meet nationally recognized safety standards or have been tested and found safe for use by the University in a manner specified by the Subcontractor. All electrical equipment, components and conductors and other items of the type requiring testing by a Nationally Recognized Testing Laboratory (NRTL) recognized by the Occupational Safety and Health Administration (OSHA), shall be NRTL listed, labeled, or tested, in accordance with Title 29, Part 1910, *General Industry Standards*, of the Code of Federal Regulations (29 CFR 1910). The Subcontractor shall notify the University Procurement Representative and the University Technical Representative, in writing, of any materials, equipment, tools, or supplies to be furnished or used that do not meet these requirements. The University reserves the right to reject any such items. Information on required NRTL testing is available at <http://www.osha.gov/dts/otpca/nrtl/>.
- D. Worker Safety And Health Requirements. The Subcontractor and its lower-tier subcontractors performing work at an LBNL worksite are subject to the DOE *Worker Safety and Health Program* regulation of Title 10, Part 851 of the U.S. Code of Federal Regulations (10 CFR 851), and shall perform the work in compliance with the *LBNL Health and Safety Manual*, available at <http://www.lbl.gov/ehs/pub3000/>, which implements the requirements of 10 CFR 851, as well as their Cal/OSHA mandated Injury and Illness Prevention Plan (IIPP) or equivalent and all other LBNL safety procedures and policies communicated to the Subcontractor. The Subcontractor is responsible for ensuring that its lower tier subcontractors comply with these requirements. Violations of these requirements may subject the Subcontractor and its lower tier subcontractors to civil penalties.

As part of this requirement, the Subcontractor and its lower-tier subcontractors shall inform their workers of their rights and responsibilities by appropriate means, including posting the DOE-designated 10 CFR 851 "It's the Law" Worker Protection Poster at its LBNL workplace where it is accessible to all workers. The poster is available at:

<http://www.lbl.gov/ehs/wshp/assets/docs/851-poster.pdf>.

The Subcontractor shall ensure that workers requiring unescorted/unbadged access to an LBNL site complete the on-line *General Employee Radiation Training* (GERT), available at: <http://ehswprod.lbl.gov/EHSTraining/GERT/default.asp>. A GERT booklet is available at [http://www.lbl.gov/ehs/html/training\\_pdf/GERT\\_PDFONLY.pdf](http://www.lbl.gov/ehs/html/training_pdf/GERT_PDFONLY.pdf) and at the LBNL Site Access office in Building 65.

**ARTICLE 6 – NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE  
EQUAL EMPLOYMENT OPPORTUNITY**

- A. The Subcontractor's attention is called to the *Equal Opportunity and Affirmative Action Compliance Requirements for Construction* clauses of the General Provisions.
- B. The goals for minority and female participation, expressed in percentage terms for the Subcontractor's aggregate work force in each trade on all construction work in the covered area, are as follows.

Goal for Minority Participation for each trade	Goal for Female Participation for each trade
25.6% Alameda County	6.9% Alameda County

These goals are applicable to the entire Subcontractor's construction work performed in the covered area. If the Subcontractor performs construction work in a geographical area located outside the covered area, the Subcontractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

- C. The Subcontractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR Part 60-4 shall be based on (1) its implementation of the *Equal Opportunity* clause, (2) specific affirmative action obligations required by the *Affirmative Action Compliance Requirements for Construction* clause, and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Subcontract, and in each trade. The Subcontractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Subcontractor's goals shall be a violation of this Subcontract, Executive Order 11246, as amended, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.
- D. The Subcontractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days of award of

any construction subcontract in excess of \$10,000 at any tier for construction work under this Subcontract. The notification shall list the name, address, and telephone number of the subcontractor, employer's identification number of the subcontractor, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract, and the geographical area in which the subcontract will be performed.

- E. As used in this clause, the "covered area" is that county in which the work will be performed.

#### **ARTICLE 7 - CHANGES TO THE WORK**

- A. Pursuant to the *Changes* clause of the General Provisions, the University may direct changes to the work, including the performance of extra work within the general scope of this Subcontract. The University will direct changes through written change orders. Unless the change order expressly identifies the change as "extra work", the directed change shall be performed by the Subcontractor at no additional cost, subject to Subcontractor's right to request an equitable adjustment through a timely and properly submitted change order claim.
- B. Change order claims shall be submitted in writing to the University Procurement and Technical Representatives. Change order claims will be considered only if submitted within 30 days after the Subcontractor receives the written change order or notifies the University Procurement and Technical Representatives, in writing that it considers any direction, instruction, interpretation, determination, or other order by the University to be a change within the general scope of the Subcontract for which it is entitled to an equitable adjustment. The University Procurement Representative may grant an extension of this time period if the change involved a lower tier subcontractor and an extension is requested within the 30 day time period.
- C. See the *Change Order Adjustment* and *Change Order Claim Procedure* clauses of the General Provisions for allowable markups and related requirements. Change order claims requesting an adjustment to the Subcontract price shall include a complete cost proposal, or a partial cost proposal and a declaration of what required information is not then known to Subcontractor. If the Subcontractor submits a partial cost proposal with the Change Order Claim, the Subcontractor shall submit a complete cost proposal within the 30 day time period or extension thereof described in paragraph B, above.
- D. The direct costs for change order work shall consist of those for labor (including payroll taxes and fringe benefits), materials, supplies, sales taxes, applicable insurance, transportation of materials, and any related bond costs incurred in the direct performance of the work. The direct costs shall not include any of the following: superintendents; assistant superintendents; project engineers; project managers; schedulers; estimators; drafting or detailing; small tools; office expenses including staff, materials and supplies; on-site or off-site trailer and storage rental and expenses; utilities; data processing personnel and equipment; Federal state or local business income and franchise taxes; overhead and profit, or any other costs and expenses.
- E. Change Orders will be converted into Subcontract Modifications, representing the complete and final resolution of all issues related to the Change Orders. The Subcontractor agrees to keep adequate documentation to permit the full and complete resolution of all change order issues.

## ARTICLE 8 – COMPLETION OF CONSTRUCTION

### A. Substantial Completion

1. Substantial completion means the stage in the progress of the construction work, as determined by the University Technical Representative, when the work is complete and in accordance with the terms of the Subcontract.
2. Upon notification by the Subcontractor that the construction work is substantially complete the University Technical Representative will inspect the work and provide the Subcontractor with a comprehensive list of items to be completed or corrected before establishing substantial completion. Subcontractor shall proceed promptly to complete and correct items on the list. The University Technical Representative will then re-inspect the work to determine whether all items have been completed and corrected. Failure to include any item on the list does not alter the Subcontractor's responsibility to complete all work in accordance with the Subcontract.
3. When the University Technical Representative determines that the work is substantially complete the Technical Representative will notify the Subcontractor in writing that the Construction Work is substantially complete. The notification will establish the date of substantial completion and the responsibilities of the University and the Subcontractor for security, maintenance, utilities, insurance and damage to the construction work.

### B. Beneficial Use

The University reserves the right to make use of any part of the work at any time prior to substantial completion or final completion, herein referred to as "Beneficial Use," upon 10 days written notice to the Subcontractor. Such beneficial use shall be at no additional costs to the University, except as provided in this Article, and shall be subject to the following conditions:

1. The University Technical Representative will inspect the portion of the work to be beneficially used and prepare a list of items to be completed or corrected prior to final completion. The Technical Representative will notify the Subcontractor in writing of the University's intent to beneficially use a portion of the Work.
2. Beneficial use shall not be construed by Subcontractor as an acceptance by the University of that portion of the construction work that is to be used, and shall not constitute a waiver of existing claims of either the University or the Subcontractor against each other.
3. The University will use its best efforts to prevent its beneficial use from interfering with the conduct of Subcontractor's remaining work.
4. The Warranty period, as described in the *Warranty of Construction* Clause (FAR 52.246-21) of the General Provisions will commence upon the first date of actual use of the portions of the construction work actually used.
5. The Subcontractor shall not be responsible for providing security in areas beneficially used or required to repair damage caused by the University in its beneficial use, but shall continue to maintain all insurance required by this Subcontract in full force and effect during the University's beneficial use.

C: Final Completion

1. Upon receipt of notice from Subcontractor that the construction work is ready for final inspection, the University Technical Representative will make such inspection. Final completion shall be when the University Technical Representative determines that the construction work is fully complete and in accordance with the Subcontract, including without limitation satisfaction of all "punch list" items.
2. Final completion is conditioned upon receipt of the following:
  - a. The final Application for Payment and all required submittals.
  - b. All guarantees and warranties procured by the Subcontractor from its subcontractors, all operating manuals for installed equipment, all as-built documents, and all other submittals required by this Subcontract.

ARTICLE 9 - INSURANCE

A. Insurance Requirements. The Subcontractor shall provide the following types and levels of Insurance coverage, which shall be maintained in full force and effect during performance of the work required by this Subcontract:

1.	<u>Commercial General Liability Insurance</u>	<u>Minimum Limit</u>
	• Per Occurrence	\$ 2,000,000
	• Products/Completed Operations Aggregate	\$ 4,000,000
	• Personal and Advertising Injury	\$ 2,000,000
	• General Aggregate	\$ 4,000,000
2.	<u>Business Automobile Liability Insurance</u>	<u>Minimum Limit</u>
	• Per Occurrence	\$ 1,000,000

The automobile liability insurance shall cover liability to third parties related to the Subcontractor's use of owned, scheduled, non-owned, or hired vehicles, including the Subcontractor's use of any University-furnished U.S. Government owned vehicles, and any resulting loss or destruction of, or damage to the University-furnished U.S. Government owned vehicles.

3. Workers' Compensation as required under California or other applicable State law, and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident and employee.
4. Builders All Risk Insurance: This insurance shall be provided as required by the General Provisions if the Subcontract value exceeds \$200,000, and shall be revised as necessary due to subsequent changes to the work in order to maintain the insurance for the full value of the work in progress and all materials and supplies.

The Subcontractor shall also provide such other insurance in such amounts, which from time to time may reasonably be required by the University against other insurable hazards relating to the work to be done.

B. Coverage Requirements

The general liability insurance, by a valid certificate or endorsement, shall: (a) include a provision designating The Regents of the University of California and the U.S. Government as **additional insureds** with respect to performance of this Subcontract by the Subcontractor and its lower-tier subcontractors and consultants; and (b) include a **waiver of subrogation** in favor of the University and the U.S. Government.

The insurance coverage shall be primary and shall not participate with or be in excess over any other valid collectible insurance or program of self-insurance of the University or the U.S. Government.

The required insurance shall be obtained from insurance companies authorized to do business in California that have an A.M. Best rating of A: VII or better, or an equivalent Standard & Poor's rating of AA or better or Moody's rating of Aa or better; or that are acceptable to the University.

The insurance shall not be subject to a self-insurance retention (SIR) or deductible of \$100,000 or more without the written approval of the University Procurement Representative. If any of the insurance is written on a claims-made form, it shall continue for three years following completion or termination of this Subcontract and provide for a retroactive date of placement prior to or coinciding with the effective date of this Subcontract.

The Subcontractor or its insurers shall provide written notification to the University Procurement Representative at least 30 days in advance of any modification, change, or cancellation of any of the insurance coverage.

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

C. Proof of Insurance

Prior to commencing any Services at a location other than the Subcontractor's or lower-tier subcontractor's facilities, the Subcontractor shall provide certificate(s) of insurance and any necessary endorsements or other documentation confirming the required insurance coverage, including the "additional insured" and "waiver of subrogation" coverage, by submitting the certificate directly to the University Subcontract Administrator.

D. Lower-Tier Subcontractor Insurance

The Subcontractor shall require any lower-tier subcontractor who will perform work at the worksite to maintain general, automobile, and employer's liability insurance with a minimum per-occurrence or aggregate limit of \$1,000,000, as well as worker's compensation insurance, and confirm the required coverage before allowing the work at the worksite to commence.

**ARTICLE 10 - LBNL SITE ACCESS REQUIREMENTS**

- A. All Subcontractor and lower-tier subcontractor employees requiring access to any LBNL controlled facility or site are subject to DOE access restrictions. Any questions should be directed to either the subcontract designated Technical Representative or Procurement Representative.



- B. The Subcontractor shall not assign foreign national (non-U.S. citizen) employees or other personnel to work at any LBNL controlled facility or site who were born in, are citizens of, are employed or sponsored by or represent a government, company, institution, or other organization based in a country on the Department of State's List of State Sponsors of Terrorism without prior written approval from DOE Headquarters. Terrorist-sponsoring countries include Cuba, Iran, Sudan and Syria. Requests for access must be submitted to LBNL Site Access Office at least 180 days in advance to allow time for approval from the DOE.
- C. The University is also required by DOE to document all foreign national employees who were born in, are citizens of, are employed or sponsored by or represent a government, company, institution or organization based in, a sensitive country and who require access to an LBNL controlled facility or site. To obtain site access, the Subcontractor must provide LBNL's Site Access Office the place of birth and citizenship for all foreign national employees/personnel working on this subcontract who may access an LBNL controlled facility or site. Employees/personnel from specific sensitive countries may need additional processing and/or be subject to specific restrictions as required by DOE Order 142.3A.

#### **ARTICLE 11 - MATERIAL SAFETY DATA SHEETS - HAZARDOUS MATERIALS**

Any hazardous materials, including any chemicals or chemical products, compounds or mixtures, furnished or used on-site under this Subcontract must be accompanied by the Material Safety Data Sheet (MSDS) required by the Federal Occupational Safety and Health Administration (OSHA) regulation 29 CFR 1910.1200(g). All of the MSDSs must reference the Subcontract number. Refer to FAR Clause 52.223-3, *Hazardous Material Identification and Material Safety Data*, of the General Provisions for additional requirements.

#### **ARTICLE 12 - WORKPLACE SUBSTANCE ABUSE PROGRAM PLAN**

The Subcontract requires the performance of hazardous activities that may involve a high risk of danger to life, public health and safety, transportation of hazardous materials, or the environment, and includes DEAR Clause 970.5223-4, *Workplace Substance Abuse Programs at DOE Sites*, which requires the Subcontractor to develop, implement, and maintain a workplace substance abuse program consistent with Part 707 of Title 10 of the Code of Federal Regulations (10 CFR 707).

Before the work can begin, the Subcontractor shall submit for approval a written Workplace Substance Abuse Program Plan (WSAPP) consistent with 10 CFR 707. Upon execution of the Subcontract and submittal and approval of the Subcontractor's WSAPP, LBNL will issue a written notice to proceed with the work. The Subcontractor is required to include DEAR Clause 970.5223-4 in any lower-tier subcontract with a value of \$25,000 that will involve the performance of any of the hazardous activities. Any lower tier subcontractor's WSAPP must be approved by the University before the lower tier subcontractor is allowed to perform work.

The program shall provide that any applicant for a testing designated position shall be drug tested before final selection for employment or assignment to such a position. Also, the program shall provide that any personnel utilized in a testing designated position shall be subject to random drug testing at a rate equal to at least 50 percent of the total number of personnel in testing designated positions for each 12 month period.

"Testing designated positions" are positions where the personnel's failure to adequately discharge his or her duties could cause significant harm to persons, property, the public health or safety, or the environment. Examples are: pilots, firefighters, and security personnel, public transportation vehicle operators, personnel directly engaged in production, use, storage, transportation, or disposal of hazardous materials, etc.

After the WSAPP is approved, its implementation will be subject to LBNL monitoring for compliance and effectiveness.

### **ARTICLE 13 – ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES**

A. General. In the performance of this Subcontract, the Subcontractor shall specify, furnish, and use environmentally preferable products and services (i.e., products and services with a lesser or reduced effect on human health and the environment), to the maximum possible extent consistent with the Subcontract requirements and the intended end use of the products or services. Information on environmentally preferable products and services is available at: <http://www.epa.gov/opptintr/epp/>.

B. Construction Requirements

In the construction of the building or work covered by this Subcontract, the Subcontractor shall specify furnish, and use: (1) products containing recovered materials that are EPA-designated items; (2) energy-consuming products that are energy efficient products; and (3) biobased products that are U.S. Department of Agriculture (USDA) designated items.

These requirements apply if the products can be acquired (1) competitively within a timeframe providing for compliance with the construction work schedule; (2) meeting construction performance requirements; or (3) at a reasonable price.

The energy-consuming product requirement applies to products listed on the following ENERGY STAR® Program or FEMP web sites, unless otherwise approved in writing by the University Procurement Representative:

ENERGY STAR®: <http://www.energystar.gov/products>

FEMP: [http://www1.eere.energy.gov/femp/technologies/procuring\\_eeproducts.html](http://www1.eere.energy.gov/femp/technologies/procuring_eeproducts.html)

The biobased product requirement applies to the extent not exempt under 7 CFR 2902.10, et seq.

C. Definitions

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, excluding materials and by-products reused within an original manufacturing process.

"EPA-designated item" means a product that is or can be made with recovered material. The product categories include: building and construction, carpets, cleaning, electronics, fleets, food services, landscaping, meetings and conferences, office supplies, and paper. They are listed by the EPA in a comprehensive procurement guideline at 40 CFR Part 247 and <http://www.epa.gov/epawaste/conserva/tools/cpg/products/index.htm>, and the EPA has provided purchasing recommendations in related Recovered Materials Advisory Notices (RMANS), available at <http://www.epa.gov/osw/conserva/tools/cpg/backgrnd.htm>.

"Energy efficient product" means a product that (i) meets the criteria for use of the Energy Star trademark label, or (ii) is in the upper 25 percent of efficiency for all similar products as designated by the DOE Federal Energy Management Program (FEMP).

"Biobased product" means a product determined by the USDA to be a commercial or industrial product (other than food or feed) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials. Biobased products include building materials, construction and road maintenance materials, furniture and furnishings, houseware and cleaning supplies, industrial supplies, landscaping and agriculture materials, office supplies, personal care items, and outdoor gear. A catalog of USDA-designated biobased products is available at: <http://www.biopreferred.gov/bioPreferredCatalog/faces/jsp/catalogLanding.jsp>.

**D. Reporting on EPA-Designated Items**

If this Subcontract exceeds \$150,000, the Subcontractor shall, within 30 days of completion of the Subcontract, submit a report to the University Procurement Representative and Technical Representative on any EPA-designated item(s) delivered or furnished and used in performance of the Subcontract, consisting of the following:

1. The total dollars spent for EPA-designated items, and
2. An estimated percentage of the total recovered material in EPA-designated items, including, if available, the percentage of post-consumer material content (i.e., material used as a consumer item and discarded for disposal or recovery).

If EPA-designated items were available but not delivered or furnished and used, the Subcontractor shall provide a written explanation, based on the reasons listed above.

**ARTICLE 14 – ASSIGNMENT OF KEY PERSONNEL**

The personnel specified below are considered to be essential to the work being performed under this Subcontract. The Subcontractor shall not reassign or divert such personnel to other projects without the written consent of the University Procurement Representative. Prior to reassigning or diverting any of the specified individuals to other projects, the Subcontractor shall notify the University Procurement Representative reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the performance of this Subcontract.

Name	Title	Percentage of Time Dedicated to the Project
	<b>Project Representatives</b>	
Jeff Parkin	Project Manager	100%
Luke Self	Project Controls	50%
	<b>Field Representatives</b>	
Ilene Strong	Health and Safety Representative	100%
Dennis Brown	Radiation Protection Manager	100%
Dave Ball	Superintendent	100%

### **ARTICLE 15 - E-VERIFY PROGRAM ENROLLMENT**

Pursuant to the *Employment Eligibility Verification* clause of the General Provisions (FAR 52.222-54), the Subcontractor shall:

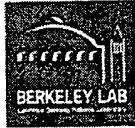
1. Include the clause in each lower-tier subcontract for construction or services exceeding \$3,000, as required by the clause (excluding those with self-employed individuals), and within 10 days of award thereof provide the University Procurement Representative with written verification of the subcontractor's enrollment in the E-Verify System.

### **ARTICLE 16 – INCORPORATED DOCUMENTS**

The following documents are hereby incorporated as a part of this Subcontract. The documents marked with an asterisk are available at: <http://procurement.lbl.gov/welcome-to-procurement-property/become-a-supplier/general-provisions/>, and <http://procurement.lbl.gov/supplier-forms/>.

- General Provisions for Fixed Price Construction Subcontracts, dated 10/27/14 \*
- Old Town Phase I Deactivation and Demolition (D&D) Construction Services Statement of Work, dated 10/7/14
- General Wage Decision No. CA140029, Modification 25, dated 10/17/14
- Assignment and Release Form, dated 4/26/13 \*

(END OF SCHEDULE OF ARTICLES)



# PROCUREMENT & PROPERTY

Office of the Chief Financial Officer

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## MEMORANDUM OF NEGOTIATIONS

### Introduction

The intent of this memorandum is to document the agreements reached during the telephone negotiation sessions between the Lawrence Berkeley National Laboratory (hereinafter "LBNL") and the Offeror Dynamic Management Solutions, LLC (hereinafter "DMS") held on the following dates:

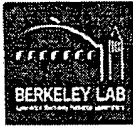
- Tuesday, September 9, 2014 from noon to 1:00 pm PDST
- Tuesday, October 21, 2014 at 9:30 am to 11:30 am PDST
- Friday, October 24, 2014 at 9:30 am to 11:30 am PDST
- Thursday, October 30, 2014 at 9:00 am to 10:00 am PDST

### Negotiated Items

In addition to offers and assertions made in DMS' September 9, 2014 Technical Proposal, as well as DMS's October 30, 2014 Proposal Assumptions – Revision 1, the Parties specifically agree to the following agreements reached during negotiations conducted by LBNL with DMS, and to the documents referenced therein.

#### A. Pursuant to the September 30, 2014 Conference Call:

1. DMS confirmed that they will perform a Gaps Analysis to verify the LBNL project documents are adequate and identify any documents they need to create for the project.
2. DMS confirmed that documents created by the blue sheeting process will be the responsibility of DMS and own the process once accepted by LBNL.
3. DMS confirmed that they have adequate supervisory staff to oversee the MARSSIM activities.
4. DMS confirmed that the Project Manager will be available 100% of the time throughout the project.
5. DMS stated that they showed 12 weeks in the schedule for soil sampling and delineation, but no time for confirmation (i.e. independent verification) but that would be included in the detailed project schedule submitted after award of the subcontract.
6. DMS clarified their understanding of the unit prices for removing contaminated soil and confirmed that they would credit the project for any under-runs in the as-bid volumes.
7. DMS confirmed that they planned to use 4 Radiological Control Technicians (RCT) for B5 and supplemental RCTs as needed for the other buildings, slabs and soils.



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8. Except for a few key areas where existing concrete is excessively thick, DMS confirmed they would use "pulverizers", rubber-tired equipment and take other steps to reduce vibration including setting up of vibration monitoring equipment at no additional cost to the project.
9. DMS stated that they will use a "Geoprobe" to obtain 2" diameter, 4-foot long subsurface soil samples
10. DMS stated they planned to inspect, and protect existing monitoring wells in the project area and will replace them at no cost to the project if they are damaged by DMS or its subs.
11. DMS stated that it will inspect, verify, design, train, pothole and protect as necessary the existing 12kv conduits and other utilities as necessary. DMS agreed to meet with the LBNL Authority Having Jurisdiction (AHJ) prior to design.
12. DMS confirmed that they will verify that all transformers (and equipment) are drained prior to removal and then subsequently test the sub slab soil (including PCBs).

**B. Pursuant to the October 2 email from Roaul Mebane:**

1. DMS confirms their proposed second work schedule meets the University's clarified intention that all field work associated with a slab and sub-slab soil removal will be completed before field work to remove the next slab begins. Therefore, no proposal cost or schedule change is required.
2. DMS confirms their proposal meets the requirement change for the project manager to be available 100% of the time for the Old Town Demolition Project Phase I. Therefore no cost or schedule change is required.

**C. Pursuant to the October 21, 2014 Conference Call:**

1. DMS proposed to blue sheet the QAP, SWPPP, SMP & WMP. SWPPP is specifically addressed in DMS' October 30, 2014 Proposal Assumptions – Revision 1.
2. It is agreed that 0% of LBNL's "implementing procedures" can be blue-sheeted, but LBNL will consider but will not be obligated to approve blue-sheeting specific implementing procedures if requested.
3. DMS will customize their standard work packages for use in the project.
4. DMS has reviewed the project plans and specifications in detail and are "comfortable" with content and number of submittals.
5. DMS plans to use their standard software to track submittals and RFI's and will give LBNL (and its consultants) full access to the programs (DMS provided LBNL with sample screenshots of the software)



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6. With respect to relocating the Ground Water Treatment System, DMS understands the 24 hour maximum down-time requirement.
7. DMS originally planned a single survey unit for purposes of conducting MARSSIM, but per discussions with LBNL is considering additional survey units to provide timeliness and flexibility.
8. DOE needs 2 working days to approve each Independent Verification (IV) final report by DMS. DMS stated they understand this and indicated there will be no cost impacts associated with the review times (and no hidden surprises).
9. Due to the scrutiny given to energization and de-energization of systems at LBNL, DMS agreed to start commissioning activities at least 2 weeks earlier than schedule at no additional cost to the project.
10. LBNL did not see the protection of the existing above-grade 12kv line in DMS' schedule. DMS discussed structural protection methods such as energy-absorbing foam blocks covered by an engineered wood structure. DMS recognizes that LBNL may require higher levels of protection including the potential use of concrete and steel and has agreed to meet with LBNL subject matters *prior to* design of the protective systems.
11. DMS understands that at least one additional mobilization and demobilization may be required if complications with regulatory agencies arise (especially with regard to areas contaminated with PCBs).
12. LBNL felt that DMS' abatement schedule appeared aggressive. DMS stated they are comfortable with their abatement schedule even though some hazardous materials will require "surgical" removal (e.g. certain asbestos containing transite panels in Building 16 that are difficult to access).
13. LBNL asked if DMS plans to use negative air containment or tenting. DMS agreed to check with their subs and provide this information to LBNL prior to award.
14. LBNL pointed out that the existing wood stairs and ramp between Buildings 14 and 16 is sprinklered and that the sprinkler system may need to be re-installed upon reinstallation of the stairs and ramp. LBNL also stated that they would entertain any proposal from DMS to replace the stairway and ramp with non-combustible materials such as steel or concrete.
15. DMS confirmed that they plan to remove the asbestos containing floor tiles and mastic in Building 5 so scanning and scoping or MARSSIM surveys may be performed prior to demolishing the floor slab. DMS stated they plan to remove the floor tile as ACM-LLW and that they plan to decon certain hot-spots.
16. LBNL expressed concern over the building 5 retaining wall schedule. DMS assumed they can set 3 to 4 tiebacks per day and stated that they are comfortable with the schedule.
17. DMS was advised that the successful bidder will be required to perform additional soil delineation (including PCB delineation) as part of the work. DMS stated that this was understood and included.



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18. DMS confirmed that the alternate (sequential) schedule will be utilized and that excavations would not be backfilled until approval from DOE was obtained.
19. DMS stated the WBS is in development; DMS will not assume that the WBS needs to match RFP Price Proposal Form, rather they will consider matching to the Schedule of Values (SOV).
20. The planned payment schedule was clarified; the erroneous DMS assumption that the RFP Price Proposal Form would be the basis for the payment schedule was corrected. A new LBNL-DMS agreed schedule of values will be used.
21. LBNL stated that DMS should assume an adequate LBNL review period for docs & submittals and that DMS should not assume LBNL has significant volume of programs/plans to adopt (via Blue-Sheeting). QAP, SWPPP, SMP, WMP to be blue sheeted (see item C.1 above).
22. The assumed contract award date in the DMS proposal is not accurate; it was clarified that the date would be contingent on DOE approval of funding and would likely not occur until mid-November.
23. DMS confirmed their schedule will include sufficient time for completion of commissioning activities (e.g., new lighting) at least 2 weeks earlier than originally scheduled (see item C.9 above)

#### **D. Pursuant to the October 24, 2014 Conference Call:**

1. The condition of the existing retaining wall above Building 52A was discussed as needing further discussion with LBNL's AE, GHD. DMS stated that they have an allowance in the retaining wall cost and that dealing with it will unlikely increase cost.
2. DMS assumed a total of 52 tiebacks and 72 soldier piles (piers) to stabilize existing retaining walls.
3. DMS confirmed that per diem will not be required for any of their staff.
4. DMS stated that Turnaround Time to incorporate LBNL comments will only take 1 working day per document.

#### **E. Pursuant to the October 30, 2014 Conference Call:**

5. LBNL was concerned that DMS may not have seen that some of the roofing materials contain asbestos. DMS confirmed their understanding that they are aware of the asbestos containing materials (ACM).
6. LBNL was concerned that DMS may not have been cognizant of the volume of ACM roofing volumes. DMS confirmed their understanding that they are aware of the asbestos containing materials (ACM) and volumes.





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## Agreement

The parties concur with the above agreements reached during negotiations conducted by LBNL with DMS, and to the documents referenced therein.

DYNAMIC MANAGEMENT  
SOLUTIONS, LLC

THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA

By:

Name:

Title:

Date:

*Salina Savage*  
SALINA SAVAGE  
member / PRESIDENT  
DECEMBER 1, 2014

By:

Name:

Title:

Date:

*Sharon Ropes*  
Sharon Ropes  
Principal Subcontracts Administrator  
November 24, 2014



### Proposal Assumptions – Revision 1

- The maximum number of waste transportation trucks is limited by the Environmental Impact Report trucking volume maximums for the Laboratory. DMS assumed a project-specific limit of 10 trips per day, 40 trips per week.
- The DMS demolition approach and planned equipment will not exceed the vibration limits described in Project Manual Specification Section 013500 1.15 and the referenced vibration report "Construction Vibration Estimate for ALS (filename: CTD-Ph1\_Vibration Study\_20140612.pdf)", during ALS operation.
- The DMS Schedule assumes a 5-day 8-hr per day work schedule with normal Federal holidays included as non-workdays. The time period between Christmas and New Years is scheduled as non-workdays.
- The DMS submitted schedule assumes an ALS shutdown schedule per <http://www-als.lbl.gov/index.php/beamlines/schedules/914-the-als-shutdown-behind-the-scenes.html>.
- Above grade demolition of Buildings 5 and 16 may be performed concurrently as per the schedule.
- Slab and sub-slab soil removal must be completed (confirmation soil management package approved by LBNL) before fieldwork to remove the next slab begins. Saw cutting will not be started on the next slab until authorized by LBNL.
- The asbestos inventory is as described in the RLCR. All drywall and roofing will be removed as asbestos containing material, which is in the best interest of the project.
- The hazardous material inventory is as described in the RLCR.
- DMS will prepare and implement a Chronic Beryllium Disease Prevention Program, which complies with the requirements of 10 CFR 850. DMS will remove the Building 5 sanitary sewer and drain piping, out to the point of cut and cap, as a beryllium contaminated material.
- Building 16/16A, 52, and 40/41 are not radiologically contaminated. The soils beneath the Perkins Pad are potentially contaminated.
- The volumes of waste and soil are as presented in the price proposal form.
- All Building 5 material would be managed as low-level radiological waste or mixed low-level waste.
- LLRW will be accepted for disposal at Nevada National Security Site.
- MLLW Volume is limited to 540 cubic feet.
- DMS will sample and analyze soils to assess potential areas of contamination identified during the demolition process including sampling soil beneath breaks in underground utilities and Project areas where there may be a potential risk to human health or the environment based on the findings of LBNL's



pre-demolition investigation. This includes delineation of contaminant boundaries. DMS will perform representative sampling in accordance with an approved Sampling and Analysis Plan.

- DMS will develop a site-specific Integrated Work Control Program (IWCP) using a graded approach for implementation and performing work at LBNL. DMS schedule has assumed 2 days to provide training to familiarize LBNL with the Integrated Work Control Process and the specific graded approach DMS will use when performing work at LBNL.
- DMS assumes in performing document and work package review and approvals, LBNL will require one review cycle for plans and work packages. This review cycle is comprised of a 10 workday LBNL initial review and 5 workdays for final review and approval following comment resolution. DMS assumes LBNL will provide one consolidated list of comments to DMS in order to expedite the approval process. The document sequence will be staggered to spread the preparation and review effort.
- All required permits associated with fieldwork activities will be identified and completed through the Integrated Work Control Process as part of the Job Hazards Analysis.
- LBNL will allow "blue sheeting" of select LBNL plans and procedures (as specified by DMS and approved by LBNL).
- Retaining wall reinforcement may use tie-backs as an alternate to soldier piles and/or in combination with soldier piles dependent on LBNL acceptance of the DMS reinforcement design work package.
- DMS will execute the project and sequence over a period of performance as depicted in our baseline schedule to be approved by LBNL.
- Office space will be provided to DMS during all phases of deactivation and demolition.
- DMS will blue-sheet and comply with the LBNL Storm water Pollution Prevention Plan and implementing procedures, we have assumed the following sampling events: Forty (40) weekly inspections, three (3) pre and post rain event inspections, and one (1) rain event sampling and analysis event.



### DMS Operations – Schedule Changes

#### Schedule Changes Cost Breakdown:

- Hotel Costs - \$161K
- Documentation - \$22K
- Individual Building Demolition Sequence - \$75K
- ALS Shutdown - \$87K

Total Schedule Changes Cost: \$345K

#### **Hotel Costs:**

The original analysis provided by DMS was in error. The mistake was comparing our original (base) schedule to our alternate revised (alternate schedule provided after discussion with LBNL to reflect additional durations) schedule. The Original Old Town DMS Alternate Schedule spanned from October 6, 2014 to November 12, 2015 this equated to 288 work days or 57 calendar weeks. The Updated Alternate schedule now spans from November 17, 2014 to February 17, 2016 which is approximately 299 work days or 64 calendar weeks. Although the work days are not significantly increased the difference in the Original Alternate Schedule and Updated Alternate schedule is an additional 7 calendar weeks. This 7 calendar weeks is the DMS hotel (equipment, essential, supplies, etc) cost for continued uninterrupted operations.

7 calendar weeks at \$23K hotel cost per work = \$161K

#### **Documentation:**

- Added approximately 106 activities several management programs, work plans and submittals for LBNL/DOE review and approval.
- Work plans were also prioritized and sequenced to minimize impact to LBNL and optimize field work activities
- 16 DMS and LBNL/DOE development and review activity durations increased for significant submittals.

\$22K



### Individual Building Demolition Sequence

- 38 Activities were added to incorporate to clarify and increase confidence in timely completion of building sequence. These activities were for:
- Site restoration activities were added to each building. Alternate schedule left site open with restoration occurring all at once at the end. Completing restoration at each site separately causes crews and equipment to demob/remob and temporary restoration measures have to be installed until all demolition activities are completed.
- 14 activities associated with Building 5 were increased to take into account that it will be the most difficult building to demolish and decontaminate. Durations were increased in work planning, LBNL review times, readiness review, demolition, retaining wall, foundation and slab removal, soil excavation, transportation and disposal, and the Final Status Survey (FSS) report.
- A Preliminary Soil Management Package activity was added for each of the buildings which had to be submitted and approved by LBNL and DOE prior to starting foundation and slab removal on the next building.
- Part of the Building 5 Preliminary Soil Management Package had to include the lab analysis for Strontium 90 which extended the soil analysis period which had to be completed prior to moving to next building.

\$75K

### ALS Shutdown

The following was added as a confidence factor for missing the ALS shutdown window and performing work for Building 16 during the rainy season.

- The DMS demolition approach and planned equipment to be used for Building 16 is assumed not to exceed the vibration limits specified by LBNL for ALS operations. This confidence factor further increased as the original alternate schedule for building 16 work was to be performed during ALS shutdown. However; in the updated alternate schedule, Building 16 foundation and slab removal activities now fall outside of the ALS planned shutdown window. Additionally, the updated alternate schedule also has resulted in the work being performed in the rainy portion of the year. The additional cost is related risk mitigation measures for these two instances which could cause our work crews to change our demolition approach, excavation methods and/or equipment to be used due to ALS vibration sensitivity or adverse weather.

\$87K



### DMS Operations – Beryllium Implementation

#### Beryllium Implementation Cost Breakdown:

- Supplemental Work Planning for Beryllium controls - \$10K
- Beryllium Awareness Training - \$8K
- Medical Surveillance - \$8K
- Beryllium Exposure Monitoring - \$10K
- Additional Materials for Beryllium Area Access controls, encapsulation, and
- Beryllium program implementation - \$30K
- Labor Delta - \$109K (extra days and labor, over and above the base scope for pipe removal due to productivity impact)

Total Beryllium Implementation Cost - \$175K

#### Beryllium Work Approach:

DMS will perform detailed work planning to remove the Building 5 sub-slab sanitary sewer and drain lines as beryllium contaminated material, in accordance with 10 CFR 850, Chronic Beryllium Disease Prevention Program. In the final rule, beryllium is defined as elemental beryllium and any insoluble beryllium compound or alloy containing 0.1 percent, which is 1000 parts per million (ppm), beryllium or greater that may be released as an airborne particulate.

DMS will provide beryllium awareness training to a beryllium work crew and will perform the required medical surveillance. Exposure monitoring will be performed during the work. Records will be generated and provided to Lawrence Berkeley National Lab (LBNL).

The conceptual work approach will be to encapsulate, prior to slab removal, the internal pipe contaminants with a flowable fill, foam injection, or equivalent material. The objective is to mitigate airborne release during ultimate removal. It is unlikely that the fill will travel to all pipe locations. Following slab removal, beryllium access controls will be established and the piping runs will be safely located, which would include substantial hand digging. PPE, respiratory protection, and work controls will be implemented prior to the piping being removed. Starting at the floor drain end, the piping would be removed in sections. If a pipe cut is made with a present internal void, additional encapsulant would be applied to the downstream sections. The removed piping sections will be contained and wrapped for disposal as mixed low-level radioactive waste.



**DMS Operations – Characterization Sampling**

DMS had allocated one day for Building 5 Characterization. The intent of this task was to perform supplemental waste characterization to satisfy the disposal facility waste acceptance criteria. One day was considered sufficient based on the detailed radiological and hazardous material characterization data provided to the bidders.

DMS is fully cognizant of additional site sub-grade sampling and characterization that must be performed to confirm cleanup, as well as to delineate contamination boundaries. This sampling will be conducted, as required, throughout the project duration in accordance with an approved Sampling and Analysis Plan (SAP). As stated in the Soil Management Plan (SMP), Rev. 2, DMS is responsible for:

- Sampling soil in areas identified as having potential contamination including beneath breaks in underground utilities and Project areas where there may be a potential risk to human health or the environment based on the findings of Lawrence Berkeley National Laboratory's (LBNL) pre-demolition investigation;
- Sampling *in situ* soil in areas where contaminated soil is excavated, to document residual concentrations remaining in place.

DMS will stop work in the general work area and notify LBNL, if indications of potential contamination is observed in areas that are unexpected. The soils will be sampled in accordance an approved SAP and any soil, that contains constituents above the levels specified in the SMP, will be removed provided approval is obtained from the LBNL Project Manager.



University of California  
Lawrence Berkeley National Laboratory

**GENERAL PROVISIONS FOR FIXED PRICE CONSTRUCTION**

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**CLAUSE 1 – DEFINITIONS**

As used herein, the following terms shall have the indicated meanings:

- "CFR" means the U.S. Code of Federal Regulations.
- "DEAR" means the DOE Acquisition Regulation.
- "DOE" means the U. S. Department of Energy.
- "FAR" means the Federal Acquisition Regulation.
- "Government" means the United States Government.
- "LBNL" means the Lawrence Berkeley National Laboratory.
- "Patent Counsel" means the DOE Patent Counsel.
- "Subcontract" means the subcontract between the University and the Subcontractor which includes these General Provisions.
- "Subcontractor" means the party who has entered into this Subcontract with the University, as identified in the Subcontract.
- The lower case term "subcontractor" means the Subcontractor's subcontractor(s).
- "University" means The Regents of the University of California, acting through the LBNL.

**CLAUSE 2 – SCOPE OF SUBCONTRACT**

The scope of the Subcontract shall be limited to the acquisition of fixed price construction.

The Subcontract is entered into under the University's Prime Contract No. DE-AC02-05CH11231 with DOE for management and operation of LBNL and performance of research and related work.

**CLAUSE 3 – PAYMENT BOND**

*(Applicable if the Subcontract amount is over \$25,000)*

Before a Notice to Proceed is issued or before the subcontractor is allowed to start work, the Subcontractor shall furnish to the University on the Laboratory's forms and naming the Regents of the University of California and the United States of America as obligee a Payment Bond or other acceptable alternative payment protection (alternative is only acceptable if subcontract amount is \$100,000 or less), guaranteeing the payment of claims of laborers, mechanics, material providers, and others. Said bond shall be in the form included with the Subcontract and with sureties acceptable to the University. The cost therefor shall be paid by the Subcontractor.

The penal amount of the Payment Bond or alternative payment protection shall be 100% of the original Subcontract price and, if the Subcontract price increases, an additional amount equal to 100% of the increase.

**CLAUSE 4 – PERFORMANCE BOND**

*(Applicable if the Subcontract amount is \$100,000 or more)*

Upon the execution of this Subcontract the Subcontractor shall furnish to the University a Performance Bond, guaranteeing the faithful performance of this Subcontract. Said bond shall be in the forms hereto

attached and with sureties approved by the University. The cost therefor shall be paid by the Subcontractor.

The penal amount of the Performance Bond shall be one hundred percent (100%) of the original Subcontract price and, if the Subcontract price increases, an additional amount equal to 100% of the increase.

**CLAUSE 5 – SURETIES AND ADDITIONAL PROTECTION**

The University shall approve any surety company which, at the time of execution of this Subcontract, is listed in the U.S. Treasury Department list of Certified Companies (Circular 570), available at: <http://www.fms.treas.gov/c570/>.

The Subcontractor shall promptly furnish additional security as may be required from time to time if the University determines such additional security is necessary to protect the interest of the University and the Government and of persons supplying labor or materials under this Subcontract.

**CLAUSE 6 – INSURANCE**

The Subcontractor shall, at its own expense, provide and maintain during the entire performance of this Subcontract, at least the kinds and minimum amounts of insurance required elsewhere in the Subcontract.

Before commencing work under this Subcontract, the Subcontractor shall certify to the University in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the University or Government's interest shall not be effective (1) for such period as the laws of the State in which this Subcontract is to be performed prescribe, or (2) until 30 days after the insurer or the Subcontractor gives written notice to the University, whichever period is longer.

The Subcontractor shall insert the substance of this clause, including this paragraph in subcontracts under this Subcontract that require work on a Government installation and shall require the subcontractors to provide and maintain the insurance required elsewhere in this Subcontract. The Subcontractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the University upon request.

**CLAUSE 7 – ASSUMPTION OF RISK**

*(Applicable to Subcontracts under \$200,000)*

Subcontractor shall and does hereby assume all risk and responsibility for damage to any materials used or work done in connection with the work from any cause or causes whatsoever, including fire, earthquake and storm, prior to the completion and acceptance of the work, and shall at Subcontractor's own cost and expense, repair and/or replace any work or materials damaged or destroyed. Since no form of property insurance is to be carried by University or Government, it will be the



responsibility of Subcontractor to provide its own protection in this respect, and the cost of such protection shall be deemed to be included in the Subcontract price. This clause shall have no applications to public liability for a nuclear incident as defined in the Atomic Energy Act of 1954, as amended, to the extent the Subcontractor is indemnified under said law.

#### **CLAUSE 8 – ASSIGNMENTS**

The administration of this Subcontract is assignable by the University to the Government or a successor-in-interest for management and operation of LBNL.

Except as to assignment of payment due hereunder, the Subcontractor shall have no right, power or authority to sell, mortgage, transfer or assign this Subcontract, any portion hereof, any interest herein, or any claim hereunder, nor allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

Neither this Subcontract nor any interest created thereby or any claim here under shall pass by operation of law or otherwise to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors, or to any other party or parties, except as expressly authorized by the University. The breach of the foregoing prohibition, whether voluntary, or by operation of law, by any process or proceeding of any court or by attachment, execution, proceeding in reorganization, composition, insolvency, or bankruptcy, whether voluntary or involuntary, shall be cause for default under this Subcontract.

#### **CLAUSE 9 – DISPUTES AND CLAIMS**

##### **A. Submittal Of Claim**

1. Except as otherwise provided in the Subcontract, any dispute between the Subcontractor and the University arising out of this Subcontract, or its breach, which is not informally disposed of by agreement shall be promptly submitted by the Subcontractor to the University as a claim. The term "claim," as used in this clause, shall mean a written request for adjustment or interpretation of Subcontract terms, payment of compensation, extension of time, or other relief with respect to the terms of the Subcontract submitted by the Subcontractor to the University with adequate supporting data and including a demand for a decision by the University. The term "Adequate supporting data," as used in this clause, shall mean a detailed statement of the basis and supporting reasons for the asserted entitlement and an itemized breakdown of any adjustment or compensation sought.

2. If the total amount of the compensation sought exceeds \$100,000, the Subcontractor shall certify, at the time of submission as the claim, as follows:

"I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the Subcontract compensation for which the Subcontractor believes the University is liable.

##### **B. Decision of University**

1. The University shall review the facts pertinent to the claim and render a written decision. A copy of the decision shall be furnished to the Subcontractor by certified mail, return receipt requested, or any other method that provides evidence of receipt.

2. The University shall use its best efforts to issue a written decision on a claim within thirty (30) days after receipt of the claim. If a decision is not issued within the stipulated period, the University shall notify the Subcontractor of the time within which the decision will be made. This time period shall depend on the size and complexity of the claim and the adequacy of the Subcontractor's supporting data and other relevant factors. If a decision is not issued on any claim within ninety (90) days after the University's receipt of the claim, the claim shall be considered to have been denied.

##### **C. Informal Resolution and Mediation**

The parties shall attempt to resolve any claim in good faith, by direct, informal negotiations. Pending resolution of the claim, the Subcontractor shall proceed diligently with the performance of this Subcontract, in accordance with its terms and conditions.

The parties, upon mutual agreement, may seek to mediate any claim through the assistance of a neutral third party at any time, but they must seek such assistance no later than 120 days after the date of the University's written decision on the claim. The cost of mediation shall be shared equally by both parties. If requested by both parties, the neutral third party may offer a non-binding opinion as to a possible settlement.

All such informal negotiations between the parties and discussions with a neutral third party shall be confidential and treated as compromise and settlement negotiations, for the purposes of application of rules of evidence.

##### **D. Arbitration**

1. The decision of the University on any claim may be arbitrated by the Subcontractor. Any written demand for arbitration must be mailed or otherwise furnished to the San Francisco Office of the American Arbitration Association, 417 Montgomery Street, San Francisco, CA 94104-1113. A copy of the demand for arbitration shall be furnished to the University.

2. The demand shall (i) contain a statement setting forth the nature of the claim, a copy of the University's decision, and a copy of this clause, and (ii) identify this Subcontract by title and number, state the amount involved, if any, and the remedy sought. The demand shall be filed together with the appropriate filing fee, as provided in the AAA Construction Industry Arbitration Rules.

3. No demand for arbitration on a dispute may be made unless the Subcontractor has submitted a claim to the University and until (i) the University has issued a written decision, or (ii) ninety (90) days after the date of the University's receipt of a claim, if a decision has not been issued by that date.

4. Timely notice of an intention to arbitrate shall be a prerequisite to an effective election to arbitrate. Except as otherwise provided in this clause, the decision of the University shall be final and conclusive unless the Subcontractor delivers to the University a written notice of the intention to arbitrate, by certified mail, return receipt requested, or any other method that provides evidence of receipt, within:

- 30 days from the date the Subcontractor receives the University's decision on a claim; or
- 180 days after the date of the University's receipt of a claim, if a decision has not been issued by that date.

##### **E. Rules of Arbitration**

Except as otherwise provided in this clause, arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated, as modified by this clause. The arbitration shall be de novo. The award rendered by the arbitrator(s) shall be final.

The following additional modifications are made to the AAA rules:

- The arbitrator(s) shall be neutral and appointed by the AAA.
- If the arbitration panel is composed of three arbitrators, one shall be an attorney. If a single arbitrator hears the claim, the single arbitrator need not be an attorney.
- A claim involving less than \$25,000 shall be heard by a single arbitrator. A claim involving \$25,000 or more shall be heard by three arbitrators.
- The parties shall have the discovery rights and follow the procedures provided in California Code Civil Procedure section 1283.05. The provisions of subparagraph (e) of section 1283.05 shall not be applicable to such discovery.
- The arbitrator(s) may employ expert technical advisor(s) for claims of extraordinary technical complexity with the consent of the parties to this Subcontract. If the arbitrator(s) utilizes an expert technical advisor, such expert technical advisor shall only communicate with the arbitrator(s) on the merits of the claim in writing, with copies served on all parties, or orally on the record in the presence of or after due notice to the parties, except as otherwise consented to in writing by all parties. All evidence, opinions or other information which an expert technical advisor testifies to or furnishes shall be subject to cross-examination and pertinent objections. Either party may

object for cause to the use of a particular individual as an expert technical advisor. If such objection is not timely made, it shall be deemed waived. The parties shall share the expense for such expert technical advisor(s) on a pro rata basis.

- If more than one demand for arbitration is made by a party to this Subcontract with respect to concurrent claims referred to the University, all such concurrent claims shall be consolidated into a single arbitration hearing unless the parties to this Subcontract otherwise agree.
- The Subcontractor's performance bond surety for the project, a Subcontractor or supplier to the Subcontractor, and the Architect may be permitted to join in and be bound by the arbitration if required by the terms of their respective contracts with the Subcontractor or the University. Such joinder shall not be required if it unduly delays or complicates the expeditious resolution of the claim unless a failure to order joinder would be likely to produce inconsistent decisions from separate proceedings among the Subcontractor and University. Any such joinder will be limited to issues raised by the Subcontractor and University directly concerning the claim.
- Unless the parties otherwise agree the locale for the arbitration shall be the San Francisco Bay area.
- The arbitrator(s) shall issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of documents and other evidence in accordance with California Code of Civil Procedure section 1282.6. Witnesses shall be entitled to receive fees and mileage as provided in Code of Civil Procedure section 1283.2.
- The arbitrator(s) shall decide the claim in accordance with the applicable substantive law of California, except that clauses based upon federal regulations will be interpreted in accordance with applicable federal decisions. An award, including an award of costs and fees, is beyond the power of the arbitrator(s) if the award is based on an error of law. The award shall include a determination of all the questions submitted to the arbitrator(s) the decision of which is necessary to determine the claim, and a summary of the evidence and the reasons, factual and legal, for the decision. The award shall be in writing and signed by either the sole arbitrator or by at least a majority if there be more than one. The arbitrator(s) shall have no authority to add to, subtract from, modify, change, alter or ignore in any way the provisions of this Subcontract or expressly written modification or supplemental agreement thereto, or to extend its duration, unless all the parties hereto have expressly agreed, in writing, to give the arbitrator(s) specific authority to do so.
- Each party to the arbitration shall pay its pro rata share of the arbitrator(s), together with other expenses of the arbitration incurred or approved by the arbitrator(s), not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

#### F. Litigation

1. The Subcontractor may elect to litigate the University's decision on, or denial of, a claim if the amount of the claim is \$100,000 or more. Such an election shall constitute an irrevocable waiver of the right to arbitrate.
2. No demand for litigation on a dispute may be made unless the Subcontractor has submitted a claim exceeding \$100,000 to the University and until (i) the University has issued a written decision, or (ii) the one hundred eighty (180) days after the date of the University's receipt of a claim exceeding \$100,000, if a decision has not been issued by that date.
3. Timely notice of an intention to litigate a claim shall be a prerequisite to an effective election to litigate. Except as otherwise provided in this clause, the decision of the University on a claim shall be final and conclusive unless the Subcontractor delivers to the University a written notice of the intention to litigate, by certified mail, return receipt requested, or any other method that provides evidence of receipt, within:
  - 90 days from the date the Subcontractor receives the University's decision on a claim; or

- 240 days after the date of the University's receipt of a claim exceeding \$100,000, if a decision has not been issued by that date.

4. The parties hereby elect the Superior Court of the State of California for the County in which the Subcontract was to be performed as the exclusive forum for such litigation.

5. If the University's decision involves a claim of \$100,000 or more, and a party to this Subcontract has demanded arbitration, the other party to this Subcontract shall have seven (7) days from the date of its receipt of the notice of such filing from the AAA within which to file an answering statement of a notice of intention to litigate the decision in lieu of arbitrating it. If the other party does not deliver a written notice of intention to litigate within the seven (7) day period, by certified mail, return receipt requested, or any other method that provides evidence of receipt, that party shall be deemed to have consented to arbitration and to have irrevocably waived the right to litigate the University's decision. If no answering statement is filed within the seven (7) day period, it shall be considered as a denial of the claim.

#### G. Claims Excluded

The procedures and remedies provided in this clause shall not apply to:

- any claim for or dispute about penalties or forfeitures prescribed by these General Provisions or by statute or regulation which another State or Federal agency is specifically authorized to administer, settle or determine;
- any claim for or respecting personal injury or death or reimbursement or other compensation arising out of or resulting from liability for personal injury or death;
- any claim or dispute involving fraud and misrepresentation;
- any claim or dispute relating to stop payment requests or stop notices or the procedures authorized by the clause entitled "Liens And Claims For Labor And Materials;"
- any claim related to the approval, refusal to approve, or substitution of subcontractors, regardless of tier, and supplies or;
- any claim based on or involving noncompliance with or violation of any applicable health, safety or environmental regulations, statutes or provision(s).

#### H. Continuance of Performance

Pending any University decision on a dispute or claim, award by the arbitrator(s), or a final adjudication by the courts, the Subcontractor shall proceed diligently with the performance of this Subcontract and in accordance with the University's decision, and the University shall pay for such performance in accordance with the payment terms of this Subcontract, unless the parties to this Subcontract otherwise agree in writing.

#### CLAUSE 10 – NON WAIVER OF DEFAULT

Any failure by the University at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of this Subcontract shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way nor the right of University at any time to avail itself of any remedies as it may have for any breach of such terms or conditions.

#### CLAUSE 11 – ENVIRONMENT, SAFETY, AND HEALTH

The Subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract to protect the health and safety of employees and members of the public, to minimize danger from all hazards to life and property, and to prevent injury to any of its employees or other persons; and shall comply with all applicable environmental, safety, health, and fire protection regulations and requirements, including those of the University and DOE (including reporting requirements). Such precautions shall include, but shall not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on University or Government premises which could be dangerous and to prevent accidents of any kind whenever work is being performed in proximity to any moving or operating machinery, equipment, or facilities, whether such machinery, equipment, or facilities are the property of or are being operated by the

Subcontractor, its lower-tier subcontractors, the University, or other persons. The safety of all persons employed by the Subcontractor and its subcontractors on University or Government premises, or any other person who enters thereupon for reasons relating to this Subcontract, shall be the sole responsibility of the Subcontractor.

The Subcontractor shall immediately take action to correct any noncompliance with the requirements of this clause. In the event that the Subcontractor fails to comply with said regulations or requirements of the University or the DOE, the University may, without prejudice to any other legal or contractual rights of the University, issue a stop-work order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

#### **CLAUSE 12 – ACCIDENT PREVENTION PROGRAM REQUIREMENTS**

The Subcontractor shall submit the following to the University prior to start of any construction work, unless otherwise advised.

1. A descriptive outline of its accident prevention program. The University will provide a job hazards analysis checklist form that can serve as the descriptive outline.
2. A report of its injury, accident, fire, and property damage experience, including motor vehicle, for the previous two (2) years.
3. Detailed site-specific safety/work plans. Examples of areas to be covered are:
  - Fire protection systems.
  - Industrial Safety : Fall protection, scaffolding, trenching and/or shoring, etc.
  - Industrial Hygiene: Confined spaces; radiological and asbestos-containing materials handling; use of chemicals, oils, solvents, paints, epoxies, adhesives, binders, and gases.
  - Environmental Protection: Washdown/spilling/release of water or liquids to storm or sanitary sewer systems; abrasive blasting; generation of hazardous wastes.
4. The name and qualifications of the job site management official assigned responsibility for the Subcontractor's safety, accident prevention, and fire protection program.

The University's written authorization to proceed with construction may be withheld until the University receives an acceptable Subcontractor safety program, including required site-specific safety/work plans.

#### **CLAUSE 13 – CHANGE ORDER ADJUSTMENTS**

Price adjustments resulting from change orders issued pursuant to *CHANGES* clause not covered by unit price or alternate bids shall be determined in accordance with the following:

1. For change order work performed by the Subcontractor and/or its affiliates, the price adjustments shall be based on the agreed-upon estimate for the direct costs for labor, payroll taxes and fringe benefits, materials, supplies, sales taxes, applicable insurance, and transportation of materials, plus a fixed mark-up rate of 15% of such direct costs ( for indirect costs and profit), to which shall be added any related bond costs.
2. For change order work performed by a first-tier subcontractor of the Subcontractor, the price adjustments shall be based on the estimated direct costs plus the fixed mark-up rate of 15%, as established in paragraph 1 above, to which the Subcontractor may add 5% plus any related bond costs.
3. For change order work performed by a second tier and/or lower-tier subcontractor(s), the price adjustments shall be based on the estimated direct costs plus the fixed mark-up rate of 15%, as established in paragraph 1 above, to which the higher-tier subcontractor(s) may add a fixed mark-up rate of 5%, (for indirect costs and profit) and the Subcontractor may add a fixed mark-up rate of 5% (for indirect costs and profit) plus any related bond costs. Performance of change order work by a third or lower-tier subcontractor must be approved in advance by the University Technical Representative.

For reductions or omissions not covered by unit prices or alternate bids, the Subcontractor agrees that the University shall be credited with an agreed-upon for the estimated direct costs that would have been

incurred in connection with the reduced or omitted work, plus the applicable fixed mark-up rates.

The estimated direct costs for change order work and reduced or omitted work shall consist of those for labor (including payroll taxes and fringe benefits), materials, supplies, sales taxes, applicable insurance, transportation of materials, and any related bond costs, and shall be consistent with the cost principles and procedures for construction contracts in FAR Part 31 (48 CFR Part 31), as may be supplemented by DEAR Part 931 (48 CFR Part 931), then in effect. No increases for indirect costs and profit shall be allowed above the fixed mark-up rates herein provided, regardless of the number of subcontractors involved.

Claims for change order work that involve adjustments to the schedule for performance of the work must include justification for the requested schedule adjustment. The Subcontractor shall provide a critical path or bar chart schedule and analysis demonstrating the effect of the proposed change to the schedule. Requests for adjustments to the schedule will not be considered without the appropriate justification.

The Subcontractor shall maintain separate accounts for each change or series of related changes, by job order or other suitable accounting procedure. The Subcontractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the University or the matter is conclusively resolved. The University may require change order accounting documentation whenever the estimated cost of a change or series of related changes exceeds \$25,000.

#### **CLAUSE 14 – CHANGE ORDER CLAIM PROCEDURE**

##### **A. Instructions**

The information listed below is required to be submitted by the Subcontractor with any proposal for additive or deductive changes or modifications to the Subcontract. Previously submitted information used to substantiate a prior proposal is not required to be resubmitted with the new proposal, provided the information is explicitly referenced and identified. The Subcontractor shall ensure that all lower tier subcontractors' proposals include the required submission information identified below. Proposals that do not include, as a minimum, the required information listed below, will be returned for re-submission. The Subcontractor shall be responsible for any construction delays resulting from incomplete or improper change order or claim proposals.

##### **B. General Submittals**

All proposals for additive or deductive changes or modifications to the Subcontract must include the following:

1. A summary of all costs by cost element.
2. Identification, description, and submittal of all rate agreements utilized.
3. Identification and submittal of cost or pricing data which are based on verifiable factual information.
4. Documentation and explanation of the estimating process used, including the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data.

##### **C. Materials**

Proposals involving materials must include the following:

1. An explanation of the basis for the kinds, quantities and cost of all material elements proposed.
2. A priced bill of material for the entire proposal showing part number/description, unit cost, quantity required, extended cost, basis for the proposed price (quotation, prior buy, similar item, etc.) and the rationale for the proposed price, unless an alternate method of estimating material costs has been accepted by the University.
3. A summary by class of material (subcontracts, purchase parts, raw materials, etc.) showing base material costs and any factors applied (i.e. escalation, attrition, usage variance, etc.) and the basis for the development and application of these factors.
4. Specific subcontract effort to be performed and identification of each subcontractor. For each subcontract change, provide a listing by source, item, quantity, and price, including the results of review of subcontract proposals. Where the required data or reviews have not been made available, provide the reasons for the omission.

5. Identification of any inter organizational transfers. Provide complete supporting data and basis for these transfers.

**D. Direct Labor**

Proposals involving direct labor must include the following:

1. Identification of labor hours by Task by labor category/skill mix.
2. Identification of rate agreement. In the absence of a labor rate agreement, provide a component breakdown of each labor rate by category. Identify any adjustment factors to these rates including the effect of union agreements, insurance adjustments, etc.

**E. Other Job Site Costs**

Proposals involving other job site costs must include a list all other costs by category/element (utilities, equipment rental, supervision, etc.) and provide supporting schedules and rationale for the amount proposed for each category element.

**F. Markups**

Proposals involving markups must reflect the allowable percentages, in accordance with the *CHANGE ORDER ADJUSTMENTS* clause.

**CLAUSE 15 – LIENS AND CLAIMS FOR LABOR OR MATERIALS**

The Subcontractor agrees that at any time upon request of the University it will submit a sworn statement setting forth the work performed or material furnished by the subcontractors, suppliers and material men, and the amount due to become due to each, and that before final payment called for hereunder, the Subcontractor will, if requested, submit to University a complete set of vouchers showing what payments have been made for material and labor used in connection with the work called for hereunder.

The Subcontractor shall:

1. Indemnify and save harmless the University and the Government from all claims, demands, causes of action, or suits, of whatever nature, arising out of the services, labor and materials furnished by the Subcontractor or its subcontractors under this Subcontract, and from all laborers', material men's and mechanics' liens upon the real property upon which the work is located or any other property of the University or the Government.
2. Promptly notify the University in writing of any such claims, demands, causes of action, or suits brought to its attention. The Subcontractor shall forward with notification copies of all pertinent papers received by the Subcontractor with respect to any such claims, demands, causes of action, or suits, and, at the request of the University, shall do all things and execute and deliver all appropriate documents and assignments in favor of the University or the Government of all the Subcontractor's rights and claims growing out of such asserted claims, as will enable the University and the Government to protect their respective interests by litigation or otherwise.

Neither the final payment nor any part of the retained percentage shall become due until the Subcontractor, if required, delivers to the University a complete release of all liens arising out of this Subcontract, or receipts in full in lieu thereof, as the University may require, and, if required in either case, an affidavit that as far as it has knowledge or information, the releases and receipts include all the labor and material for which a lien could be filed; but the Subcontractor may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to the University to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, the Subcontractor shall refund to the University all amounts that the latter may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorney's fees.

Any subcontractor, material man, or workman, or anyone else having any claim against the Subcontractor for or on account of work done or material furnished for the performance of the work provided for here under, may give written notice of said claim and the amount thereof to the University, who may, but shall not be obliged to, thereupon withhold from payments due or to become due thereafter to the Subcontractor an amount equal to such claims until such claims are adjusted and paid. The provisions of this clause shall not lessen or diminish but shall be in addition to the right or duty of the University to withhold any payments under the provisions of the laws of the State of California respecting the withholding of sums due to the Subcontractor.

**CLAUSE 16 – BUILDERS ALL-RISK PROPERTY INSURANCE**

(Applicable to Subcontracts over \$200,000.)

**A. Coverage Requirements**

The Subcontractor shall, at its own expense, provide and maintain builders all-risk insurance, insuring the full value of all work performed and materials supplied under this Subcontract against all risks of physical loss or damage until final completion and University's acceptance of all the work, including but not limited to fire and associated perils, vandalism and malicious mischief, and other causes.

**B. Conditions of Coverage**

1. The builders all-risk insurance shall (a) include a provision designating the University and the Department of Energy (DOE) as "additional insureds" on all of the required insurance, by certificate, endorsement, or otherwise; (b) include a provision that the policies are primary and shall not participate with nor are excess over any other valid and collective insurance; (c) include a waiver of subrogation in favor of the University and Government; and (d) provide for deductible amounts not exceeding 5% of the insurable value. In the event of an insured loss or damage, the Subcontractor agrees to pay to the University, upon demand, an amount equal to the deductible amount.

2. The builders all-risk insurance policies obtained by the Subcontractor under provisions of this clause shall specifically provide that the proceeds of said policy or policies shall be payable to the Subcontractor and the University, as their interests may appear, and that in the case of an act of God, the proceeds of said policy or policies shall be payable to the University, to indemnify the University and Government for any loss or damage caused by such act of God, if the University elects to terminate the Subcontract.

3. The insurer or the Subcontractor shall notify the University at least 30 days in advance of any modification, change, or cancellation of any of the builders all-risk insurance.

**C. Insurers & Policies**

The all-risk insurance shall be obtained from an insurance carrier or carriers approved by the University, under an insurance policy or policies satisfactory to the University in form and substance.

**D. University May Insure for Subcontractor**

In case of the breach of any provision of this clause, the University may, at its option, take out and maintain such builders all-risk insurance in the name of the Subcontractor or any subcontractor, as the University may deem appropriate, and may deduct the cost of obtaining and maintaining such insurance from any sums which may be found or become due the Subcontractor under this Subcontract.

**E. Certificates of Insurance**

Prior to commencement of the work at the worksite, the Subcontractor shall issue to the University a certificate or certificates of insurance substantiating and covering the policies required under this clause, specifically addressing the *Conditions of Coverage* set forth above. The certificate or certificates of insurance shall be submitted on a form acceptable to the University and shall show all companies providing the coverage.

**CLAUSE 17 – BUY AMERICAN ACT**

The FAR clause 52.225-9, *BUY AMERICAN ACT – CONSTRUCTION MATERIALS* (included by reference below) requires that only domestic construction material be used in the performance of this Subcontract. The use of any non-domestic materials under this Subcontract must be approved by the University prior to installation. Unapproved, non-domestic materials delivered to the project site shall be immediately removed from the site by the Subcontractor at the Subcontractor's expense. If non-conforming materials are installed, the Subcontractor shall remove the non-conforming material from the work and replace the material with approved domestic material, at the Subcontractor's expense. If the cost of removal is prohibitive, as determined by the University, and the non-conforming material otherwise meets the requirements of the specifications, the cost of the non-conforming material shall be deducted from the Subcontract amount.

#### **CLAUSE 18 – FORCED, CONVICT, AND INDENTURED LABOR**

- A. By signing or accepting this subcontract, the Subcontractor hereby certifies that no foreign-made equipment, materials, or supplies furnished to the University pursuant to this subcontract will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.
- B. Any Subcontractor subcontracting with the University who knew or should have known that the foreign-made equipment, materials, or supplies furnished to the University were produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction, when entering into a subcontract pursuant to the above, may have any or all of the following sanctions imposed:
1. The subcontract under which the prohibited equipment, materials, or supplies were provided may be voided at the option of the University.
  2. The Subcontractor may be removed from consideration for University subcontracts for a period not to exceed 360 days.

#### **CLAUSE 19 – SUPERINTENDENCE BY SUBCONTRACTOR**

At all times during performance of this Subcontract and until the work is completed and accepted, the Subcontractor shall directly superintend the work or assign and have on the worksite a competent superintendent and any necessary assistants, each of whom must be satisfactory to the University. The superintendent shall not be changed except with the consent of the University, unless the superintendent proves to be unsatisfactory to the subcontractor or ceases to be in its employ. The superintendent shall have the authority to act for the Subcontractor in the Subcontractor's absence; and all notices, directions, and instructions given to the superintendent shall be as binding as if given to the Subcontractor.

The Subcontractor shall give efficient supervision of the work, using its best skill and attention. It shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the University any error, inconsistency or omission which it may discover.

#### **CLAUSE 20 – RELEASE OF INFORMATION**

The subcontractor agrees that information regarding this Subcontract, any data developed or obtained, and the name of the University, LBNL, or the Government shall not be disclosed in any publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information without prior written approval from the University Procurement Representative.

#### **CLAUSE 21 – NOTIFICATIONS**

- A. Subcontractor shall immediately notify the University Procurement Representative in writing of: (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; and (2) any claim made against the Subcontractor, the cost of which is reimbursable hereunder.
- B. Subcontractor agrees to notify the University of any government tax, fee, or charge levied or purported to be levied on or collected from the Subcontractor in connection with this Subcontract which the Subcontractor has reason to believe may be inapplicable or invalid, and which would be reimbursable or the University has claimed an exemption hereunder. Subcontractor also agrees to refrain from paying any such tax, fee, or charge, unless otherwise authorized by the University, and to take such steps as may be required by the University to cause such tax, fee, or charge to be paid under protest and, if so directed by the University, to cause to be assigned to the University or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, and to permit the University or its designee to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the Subcontractor's name.
- C. If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Subcontract, it shall immediately notify the University Procurement Representative in writing of such circumstances, and the Subcontractor shall take whatever action is reasonably necessary to resolve such circumstances within the shortest possible time.

#### **CLAUSE 22 – LIABILITY FOR INJURIES AND DAMAGES**

The Subcontractor assumes the entire responsibility and liability for losses, expenses, damages, demands, and claims in connection with or arising out of any personal injury (including death), and/or damage or destruction or alleged damage to or destruction of property, sustained, or alleged to have been sustained, in connection with or arising out of the performance of the work by the Subcontractor, its agents, servants, employees, subcontractors and consultants, save and except that the Subcontractor, its agents, servants, employees, subcontractors and consultants shall not be liable for the sole negligence of the University.

The Subcontractor shall indemnify and hold harmless the University and the Government, their officers, agents, servants, and employees from any and all liability for such losses, expenses, damages, demands, and claims, and shall defend any suit or action brought against any or all of them based on any alleged personal injury or property damage, and shall pay any damages, costs and expenses, including attorney's fees, in connection with or resulting from such suit or action.

#### **CLAUSE 23 – LAWS AND REGULATIONS**

All delivered items and all services performed under this Subcontract shall be in compliance with all applicable laws, regulations, and orders, including but not limited to those relating to wages, hours, employment, discrimination, immigration, and safety (including worker safety and health), export control, and environmental protection.

#### **CLAUSE 24 – ENTIRE AGREEMENT AND ORDER OF PRECEDENCE**

This Subcontract shall consist of the Subcontract document (including any signature page and schedule of articles), these General Provisions, and any other referenced or incorporated clauses, provisions, and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) these General Provisions, including the FAR and DEAR clauses listed in the clause entitled *Clauses Incorporated by Reference*; (c) any specifications (including drawings); (d) other documents listed in the Subcontract Article entitled *Incorporated Documents*, if any, in the order in which they are listed; and (e) any other referenced or incorporated clauses, provisions, and documents.

#### **CLAUSE 25 – CLAUSES INCORPORATED BY REFERENCE**

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9 of CFR Title 48 and available at <http://www.gpo.gov/fdsys/>, are hereby incorporated by reference as a part of these General Provisions, as prescribed below. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

As used in the clauses, the term "contract" shall mean this Subcontract; the term "Contractor" shall mean the Subcontractor; the lower case term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in FAR 52.227-1, 52.227-2, 52.227-4, 52.227-14, and 52.227-19, and DEAR 970.5232-3, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University. As used in FAR 52.245-1, the terms "Government" and "Contracting Officer" shall mean the University, except with respect to title. As used in DEAR 952.227-9 and 970.5232-3, the term "DOE" shall mean DOE and the University.

#### **THE FOLLOWING CLAUSES APPLY TO ALL SUBCONTRACTS:**

- |                 |  |
|-----------------|--|
| DEAR 952.203-70 | WHISTLEBLOWER PROTECTION OF SUBCONTRACTOR EMPLOYEES (DEC 2000). Applies if the Subcontract involves any work at a DOE-owned or leased facility.                        |
| DEAR 952.204-71 | SENSITIVE FOREIGN NATIONS CONTROLS (MAR 2011). Applies if any nuclear technology information will be made available to foreign nationals of sensitive foreign nations. |
| DEAR 952.204-77 | COMPUTER SECURITY (AUG 2006). Applies if the Subcontractor has access to any computers owned, leased or operated by or on  |

	behalf of LBNL or DOE.	DEAR 952.227-9	REFUND OF ROYALTIES (FEB 1995). Applies if "royalties" are paid under the Subcontract by the Subcontractor, or a subcontractor at any tier.
FAR 52.215-19	NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)		
FAR 52.219-8	UTILIZATION OF SMALL BUSINESS CONCERNS (JAN 2011). Applies if the Subcontract involves any further subcontracting opportunities.	FAR 52.227-14	RIGHTS IN DATA-GENERAL (MAY 2014), with ALTERNATE V and DEAR 927.409(d)(3), and substituting paragraph (a) with DEAR 927.409(a).
FAR 52.222-21	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)		Applies if any "data" will be produced, furnished, or acquired under the Subcontract.
FAR 52.222-26	EQUAL OPPORTUNITY (MAR 2007) Note: Download the required EEO Poster at: <a href="http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm">http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm</a>		If delivery of Limited Rights Data is required, then ALTERNATE II shall apply, with the following disclosure purposes added to the end of paragraph (a) of the Limited Rights Notice:
FAR 52.222-27	AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)		1. Use (except for manufacture) by support services contractors or subcontractors;
FAR 52.222-50	COMBATING TRAFFICKING IN PERSONS (FEB 2009)		2. Evaluation by non-government evaluators;
DEAR 970.5223-1	INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)		3. Use (except for manufacture) by other contractors or subcontractors participating in the Government's program of which the specific subcontract is a part;
FAR 52.223-3	HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN.1997), with ALTERNATE I (JUL 1995). Applies if the Subcontract involves the delivery or on-site use of any hazardous materials.		4. Emergency repair or overhaul work; and
FAR 52.223-11	OZONE-DEPLETING SUBSTANCES (MAY 2001). Applies if the Subcontract involves the delivery or use of ozone-depleting substances or supplies that may contain or be manufactured with ozone depleting substances		5. Release to a foreign government, or its instrumentalities, if required to serve the interests of the U.S. Government, for information or evaluation or for emergency repair or overhaul work.
FAR 52.223-12	REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995). Applies if the Subcontract is for services involving the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances, as a refrigerant, such as air conditioners (including motor vehicles), refrigerators, chillers, or freezers.	FAR 52.227-19	If delivery of Restricted Computer Software is required, then ALTERNATE III shall apply. COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007). Applies if the Subcontract involves the acquisition of commercial computer software.
FAR 52.223-15	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (DEC 2007). Applies if the Subcontract involves furnishing, specifying the use of, or using at an LBNL Site any energy-consuming product listed in the ENERGY STAR® Program or DOE's Federal Energy Management Program (FEMP). For information on listed energy-consuming products see: <a href="http://www.energystar.gov/products">http://www.energystar.gov/products</a> and <a href="http://www1.eere.energy.gov/femp/technologies/eeep_purchasingspecs.html">http://www1.eere.energy.gov/femp/technologies/eeep_purchasingspecs.html</a> .	DEAR 952.227-82	RIGHTS TO PROPOSAL (APR 1994), if the Subcontract is based on a technical proposal.
FAR 52.223-16	IEEE 1680 STANDARD FOR THE ENVIRONMENTAL ASSESSMENT OF PERSONAL COMPUTER PRODUCTS (DEC 2007). Applies if the Subcontract involves the furnishing or use at an LBNL Site of any personal computer products (as defined). Requires personal computer products that are EPEAT Bronze Registered or higher. For information about the standard, see <a href="http://www.epeat.net">http://www.epeat.net</a> .	DEAR 970.5232-3	ACCOUNTS, RECORDS, AND INSPECTION (DEC 2010), Paragraphs (a) through (h), excluding Paragraph (d). Applies If costs incurred are a factor in determining any payable amount. The records shall be retained for 3 years after final payment.
FAR 52.223-18	ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)	FAR 52.232-5	PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 2014)
FAR 52.225-9	BUY AMERICAN ACT – CONSTRUCTION MATERIALS (SEP 2010)	FAR 52.236-2	DIFFERING SITE CONDITIONS (APR 1984)
FAR 52.225-13	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)	FAR 52.236-3	SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK (APR 1984)
FAR 52.227-4	PATENT INDEMNITY – CONSTRUCTION CONTRACTS (DEC 2007)	FAR 52.236-5	MATERIAL AND WORKMANSHIP (APR 1984)
		FAR 52.236-7	PERMITS AND RESPONSIBILITIES (NOV 1991)
		FAR 52.236-8	OTHER CONTRACTS (APR 1984)
		FAR 52.236-9	PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)
		FAR 52.236-10	OPERATIONS AND STORAGE AREAS (APR 1984)
		FAR 52.236-11	USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)
		FAR 52.236-12	CLEANING UP (APR 1984)
		FAR 52.236-13	ACCIDENT PREVENTION (NOV 1991)
		FAR 52.236-14	AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)
		FAR 52.236-15	SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)
		FAR 52.236-17	LAYOUT OF WORK (APR 1984)
		FAR 52.236-21	SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION (FEB 1997)
		FAR 52.242-14	SUSPENSION OF WORK (APR 1984)

FAR 52.244-2 SUBCONTRACTS (OCT 2010), with ALTERNATE I (JUN 2007). Paragraph (d) insert regarding consent is: "Any subcontract or purchase order that: (1) is for work at an LBNL site; (2) exceeds \$150,000 and is for other than a "commercial item" as defined in FAR 2.101; or (3) provides for the reimbursement of costs."

FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (DEC 2010).

FAR 52.245-1 GOVERNMENT PROPERTY (APR 2012)

FAR 52.246-12 INSPECTION OF CONSTRUCTION (AUG 1996)

FAR 52.246-21 WARRANTY OF CONSTRUCTION (MAR 1994), with ALTERNATE I (APR 1984).

FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003). Applies if the Subcontract involves international air transportation.

FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006). Applies if the Subcontract involves ocean transportation of supplies other than "commercial items", except as described in paragraph (e)(4) of the clause.

FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (APR 2012), with ALTERNATE I (SEP 1996).

FAR 52.249-10 DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

Applies if the Subcontract involves any of the hazardous activities stipulated in 10 CFR 707.2

**THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$100,000 OR MORE:**

FAR 52.222-35 EQUAL OPPORTUNITY FOR VETERANS (SEP 2010)

FAR 52.222-37 EMPLOYMENT REPORTS ON VETERANS (SEP 2010)

DEAR 970.5227-4 AUTHORIZATION AND CONSENT (AUG 2002), Paragraph (a)

**THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$150,000:**

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)

FAR 52.203-7 ANTI-KICKBACK PROCEDURES (OCT 2010), excluding paragraph (c)(1)

FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)

DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009), with ALTERNATE I. Applies if the Subcontract involves advisory and assistance services, as defined in FAR 2.101. The period of ineligibility shall be five years.

FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005). Applies if the Subcontract involves mechanics or laborers and is for other than "commercial items."

FAR 52.227-1 AUTHORIZATION AND CONSENT (DEC 2007)

FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (DEC 2007)

FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)

FAR 52.243-4 CHANGES (JUN 2007)

**THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$2,000 OR MORE:**

FAR 52.222-6 CONSTRUCTION WAGE RATE REQUIREMENTS (MAY 2014). Note: See the applicable Wage Determination which is included in the Subcontract. Download the required Poster at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>

FAR 52.222-7 WITHHOLDING OF FUNDS (MAY 2014)

FAR 52.222-8 PAYROLLS AND BASIC RECORDS (MAY 2014)

FAR 52.222-9 APPRENTICES AND TRAINEES (JUL 2005)

FAR 52.222-10 COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

FAR 52.222-11 SUBCONTRACTS (LABOR STANDARDS) (JUL 2005)

FAR 52.222-12 CONTRACT TERMINATION – DEBARMENT (MAY 2014)

FAR 52.222-13 COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)

FAR 52.222-14 DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

FAR 52.222-15 CERTIFICATION OF ELIGIBILITY (MAY 2014)

**THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$500,000:**

DEAR 952.226-74 DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997)

**THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$700,000:**

FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (AUG 2011). Applies if certified cost or pricing data is required.

FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 2010). Applies if certified cost or pricing data is required.

**THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$1,500,000:**

FAR 52.219-9 SMALL BUSINESS SUBCONTRACTING PLAN (JAN 2011). Applies unless the Subcontractor is a small business or there are no subcontracting possibilities.

**THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$5,000,000:**

FAR 52.203-13 CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT (APR 2010). Applies if the Subcontract has a performance period of more than 120 days. All disclosures of violation of the False Claims Act or of Federal criminal law shall be directed to the DOE Inspector General, with a copy to the LBNL DOE Contracting Officer.

**THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$3,000:**

FAR 52.222-54 EMPLOYMENT ELIGIBILITY VERIFICATION (JUL 2012)

**THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT EXCEEDS \$15,000:**

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (OCT 2010)

**THE FOLLOWING CLAUSE APPLIES IF THE SUBCONTRACT IS FOR \$25,000 OR MORE:**

DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2010).

DISPLAY OF HOTLINE POSTER(S) (DEC 2007).

Download the required poster at:

<http://energy.gov/ig/downloads/office-inspector-general-hotline-poster>

**END OF GENERAL PROVISIONS**



**Statement of Work**  
**Old Town Phase 1 Deactivation and Demolition (D&D) Construction Services**  
**October 7, 2014**

Lawrence Berkeley National Laboratory (LBNL) is a multi-program research facility managed by the DOE Office of Science (SC). It was founded in 1940 when the Radiation Laboratory (LBNL's predecessor) outgrew its main campus facilities. "Old Town" is a cluster of buildings *and facilities* built across approximately 15 acres within LBNL. Over the years, the Old Town buildings were cleaned *up* and repurposed, but they are not constructed to current seismic standards. Some of these buildings have since been demolished and most of the remaining facilities are scheduled to be removed. The facilities also partially overlay a groundwater plume with Volatile Organic Compound (VOC) contamination that is being remediated by a pump-and-treat system subject to regulation by state (California Department of Toxic Substance Control (DTSC)) and local environmental agencies.

The Old Town buildings were erected in the 1940s and 1950s; as such, asbestos and lead paint are still present in some locations despite heavy renovation over the years. Most of the buildings have been radiologically and chemically surveyed to support office-use occupancy, but all buildings have some inaccessible areas.

The Old Town Demolition Project Phase 1 (Project) will result in the cleanup and removal of roughly 19,000 gross square feet (gsf) of excess facilities and roughly 28,000 gsf of concrete slabs and the remediation of contaminated soil. The Project includes the demolition of Buildings 5, 16, and 16A and adjacent electrical pad, removal of the slabs, contaminated soil clean up and site restoration of the areas of Buildings 5, 16, 16A and adjacent electrical pad, 40, 41, 52 and 52A.

The buildings have previously hosted radioactive isotopes, beryllium, *and* hazardous chemicals. An extensive characterization campaign to better understand the extent of radiological and hazardous material contamination in the buildings, slabs and soils has been completed. This reconnaissance level characterization has shown that there are distributed radiological contaminants in the concrete and soil in and adjacent to Building 5. Essentially all buildings have enough asbestos in siding, roof and floor tiles and lead paint to require special handling for occupational protection and for prevention of emissions or releases to the environment. The quantities of waste that will be generated by the Project have been estimated; the estimates are provided in the Waste Management Plan and the Demolition Plans included with the Reference Documents.

The terrain at LBNL is very steep, and was terraced to place the buildings. The buildings have slab foundations with the bottom-level-floors' back walls doubling as retaining walls. The floor slab and west foundation of Building 5 work in concert with the east retaining wall in the building. Some Building 5 surfaces attached to the east retaining wall are known to be radiologically contaminated. The Subcontractor shall ensure the retaining wall is restored if its integrity is affected during removal of the contamination.

All occupants have been vacated from the buildings. The buildings have been brought to a "cold and dark" configuration with operational utilities being deactivated except for the fire

suppression, fire alarm systems, sump pump and groundwater treatment equipment which are to remain active until the buildings are ready to be demolished. The electrical pad adjacent to Building 16A will be brought to a cold and dark configuration by LBNL prior to start of contractor field work.

The end state of the site shall be as described in the Demolition Plans (Drawings) included in the Reference Documents. The Project objectives, which are expounded in the Reference Documents, follow:

1. Conduct all operations in accordance with the Project Reference Documents.
2. Remove fixed equipment and Buildings 5, 16, and 16A and the adjacent electrical pad, to slab on grade.
3. Characterize slab and soil under de-energized electrical pad.
4. Remove slabs and footings for Building 5, 16, 16A and the adjacent electrical pad, 40, 41, 52, and 52A slabs and surrounding contaminated soil.
5. Reinforce or construct new retaining walls.
6. Conduct all demolition and excavation so as not to impact LBNL research operations.
7. Manage all waste and recycled materials generated by the Project in accordance with approved procedures, drawings and plans, obtain net weight of waste shipments, and dispose of the waste at appropriate disposal facilities.
8. Conduct verification sampling to ensure that cleanup has met the DTSC Industrial Use Standard (if required).
9. Provide a suitable MARSSIM final status survey of the Building 5 site, yard *and existing retaining wall*.
10. Restore the Project sites to a safe, clean stable state.

As delineated below, the Subcontractor shall follow a specific serial approach for slab and sub-slab soil removal. All field work associated with a slab and soil sub-slab soil removal shall be complete before field work to remove the next slab begins. These activities include areas such as concrete slab size reduction (cutting or breaking), concrete removal, soil characterization, soil removal as needed, confirmatory soil sampling and results analysis, and continued iterative soil removal and sampling as required to meet the limits for residual contamination specified in the Soil Management Plan.

The work associated with the Project encompasses a myriad of tasks and deliverables. Generally, the work activities include the following:

- Project management, support, and oversight
- Training
- Work control planning, and document and program preparation
- Work control implementation and readiness demonstration
- Utility isolation and removal
- Hazardous material abatement
- Radiological material removal
- Building, slab, and foundation demolition
- Retaining wall reinforcement or replacement
- Waste and debris characterization, removal, and disposal
- Recyclable and salvageable material removal

- Contaminated soil cleanup, including removal and disposal
- Site restoration and stabilization

Stabilization of the site includes relocation of Groundwater Treatment System, reinforcement or replacement of retaining walls, paving, striping, drainage, lighting, safety barriers, railings, signage, pedestrian access, etc. A description of the end state for the Project is shown in the table below.

End State Categories	End State Description and Completion Criteria
1. Equipment and structures	Equipment within the buildings and electrical pad have been characterized, removed and dispositioned in accordance with DOE Order 458.1. Buildings and/or slabs 5, 16, 16A, 40, 41, 52, 52A, and the Old Town electrical pad are demolished, removed and disposed at appropriately licensed facilities, including floor slabs, foundations, and footings and incidental soil cleanup.
2. Service and Utility Systems and Equipment	Inactive and abandoned utility systems, equipment and waste process piping are air-gapped and capped at logical locations, removed as necessary, and properly disposed. The existing groundwater treatment system has been relocated to allow cleanup of remaining contaminated groundwater. Active utilities running through the site, e.g., 12kV electrical above ground lines, foundation drains, ground water monitoring wells are protected and remain active.
3. Radiological Materials	Radioactively-induced/activated and surface-contaminated materials have been characterized and disposed of in accordance with regulatory requirements to NNSS or other appropriate facility.
4. Hazardous Items and Materials	Hazardous materials and chemicals have been characterized, removed and abated in accordance with environmental regulations and disposed at appropriately licensed facilities.
5. Non-Hazardous Materials	Clean demolition scrap, salvage, and wastes are removed and dispositioned to approved locations and recycled to the extent practical.
6. Site	Retaining walls, paving, drainage, lighting, signage, pedestrian access, safety barriers, hand and guard rails, hydroseeding, etc., have been installed to stabilize former building footprints and render a safe site.

**Alternatives and Options:** As clarified by the Subcontractor, the Soldier Pile Retaining Wall Option for Building 5 submitted in the Subcontractor's proposal was for a high-quality permanent wall. The University subsequently clarified that the intent was for an option to provide a reinforced or new wall that is more temporary in nature, and therefore, the University does not wish to exercise its option for the subject Soldier Pile Retaining Wall Option as written. If the existing Building 5 retaining wall cannot be radiologically released and reinforced in-place then it may consider a value engineered approach as discussed with the Subcontractor on September 30, 2014. **In addition, the University hereby elects to choose the Alternate schedule and does retain the following options that it may elect to exercise as generally outlined**

in the “Alternate, Options and Unit Prices” section of the RFP and more specifically on the Price Proposal form:

1. Alternate: The project schedule “is influenced by the limited sequencing of slab removal and soil cleanup activities as described in the Supplier Attributes section of the RFP”.
2. Option: Vibration Restriction Option: Removal of restrictions regarding use of specific equipment to ALS shutdown periods - see Project Manual Specification 013500.
3. Option: Demobilization/Remobilization Option: Mid-Project Demobilization and Remobilization for a period of up to 18 months.

**Options:** The University may exercise the following options as outlined in the “Alternate, Options and Unit Prices” section of the Subcontractor’s proposal, “Proposal for Deactivation and Demolition (D&D) Construction Services” dated September 9, 2014:

1. Option: Vibration Restriction Option: Removal of restrictions regarding use of specific equipment to ALS shutdown periods - see Project Manual Specification 013500
2. Option: Demobilization/Remobilization Option: Mid-Project Demobilization and Remobilization for a period of up to 18 months

The University incorporates the following approach as proposed by the Subcontractor in its September 9, 2014 proposal and delineated below:

Description of Proposed Approach	DMS Proposal Page No.
<p><b>Use of Geoprobe to complete sub-slab Rad and VOC characterization, i.e.:</b>                      “Restoration Services, Inc. (RSI) will bring turnkey services to complete the remaining slab and sub-slab soil characterization required to support waste disposition and cleanup verification in accordance with final site use requirements. RSI maintains [...] an inventory of field equipment including concrete coring devices and Geoprobe® direct push technology rigs capable of all required scope at LBNL.”</p>	<p>p.2, 35,36</p>
<p><b>Engineering survey of structure prior to demo, i.e.:</b> “In addition, preparation of the Demolition Work Package, DMS will adhere to the requirements of 29 CFR 1926, Subpart T – Demolition, Section 850(a), which requires that prior to permitting employees to start demolition operations, an engineering survey of the structure must be performed by a CA-registered engineer.”</p>	<p>p.17</p>

Description of Proposed Approach	DMS Proposal Page No.
<p><b>Participation in DMS readiness review, i.e.:</b> "Upon approval of the Work Packages, DMS will conduct a readiness demonstration to validate the team's readiness for performing the work. The readiness determination will be conducted at a level of rigor commensurate with the risk posed by the activity and the facility hazards present. Using a graded approach, DMS has evaluated the work activities to be performed under this contract and has assigned risk and complexity levels to each activity (high, medium, or low) ..." It is LBNL's expectation that the LBNL project team will be afforded the opportunity to review and participate in DMS's readiness review.</p>	p.17, 23, 24
<p><b>Monitoring for and control of vibration producing equipment, i.e.:</b> "Special instructions for unique conditions or performance requirements will be clearly defined in each Work Packages, including sampling, health and safety monitoring, and controls such as noise, vibration, dust, and perimeter monitoring." Also included is: "Special instructions for unique conditions or performance requirements will be clearly defined in each Work Packages, including sampling, health and safety monitoring, and controls such as noise, vibration, dust, and perimeter monitoring."</p>	p.17, 19, 21
<p><b>Protection of active utilities, including 12kv lines located near B5 and B16, ground water treatment system, B52 surge tank and monitoring wells, i.e.:</b> "As part of our mobilization activities, the DMS team will place protection, such as reinforced wooden structures, over active utilities located near Buildings 5 and 16, including the four 12kv lines located south of Building 16." Also included is: "In addition, approximately 21 monitoring or extraction wells are located within the Old Town Phase 1 Demo work area. All wells will be protected prior to performing any D&amp;D activities. Protection will also include surveying of well locations, inspection and cleaning of well boxes (mainly flush-mounted)." Note: protection of the 12kv lines and monitoring wells were further clarified during a conference call with the Subcontractor on September 30, 2014." Also included: "Building 52 GW surge tank will be protected and kept in operation during Building 52 slab demolition and soil remediation activities."</p>	p.26, 30, 31
<p><b>B5 Stucco skim coat to be removed prior to demo, i.e.:</b> "The stucco skim coat (containing &lt;1% chrysotile asbestos) will be removed prior to demolition so that no asbestos controls and waste segregation will be required during demolition. All asbestos dust will be HEPA vacuumed and the areas cleared prior to removing asbestos controls."</p>	p.28

Description of Proposed Approach	DMS Proposal Page No.
<p><b>B5 HVAC and process piping will be removed using rad controls, i.e.:</b> “DMS will minimize the spread of contamination during dismantlement of HVAC systems by maintaining airflow through the portable HEPA filtered machines. This will maintain airflow to the HEPA filters as the ducting is removed. The ductwork will be dismantled from the suction end toward the filters, such that a flow is maintained. Piping and ductwork will be size reduced and packaged as LLW or MLLW for offsite disposition. Holes will be drilled into the HVAC duct and Lock-Down will be sprayed into the ducts prior to disassembly. This will prevent contaminated dust from becoming airborne during the removal and size reduction process”.</p>	p.29
<p><b>Protection against and monitoring for Segre Road retaining wall movement, i.e.:</b> In addition to other areas where Segre Road is mentioned: “... prior to performing any demolition (building and slab) at Building 16 and Slab 52, DMS team geotechnical engineers will provide stability monitoring of the Segre Road retaining walls taking pre-demo and post-demo measurements, and will provide monitoring during any demo activities ...”</p>	p.31
<p><b>Saw-cutting of slabs (with few exceptions; LBNL may provide relief if no impact to ALS), i.e.:</b> “Due to the sensitivity to vibrations on the site, all of the flat work (i.e. building slabs, concrete and asphalt e nominal 3-ft by 3-ft squares. A rubber-tired hydraulic excavator with a thumb will be used to remove the squares and place the squares into the disposal containers.”</p>	p.36
<p><b>Trench plates to minimize cross contamination, i.e.:</b> “Trench plates will be placed over exposed soil locations in the direct line of travel during removal of concrete debris. This will minimize the amount of potentially uncontaminated soil to be exposed thereby preventing cross contamination.”</p>	p.37, 44
<p><b>Beryllium controls to be implemented, i.e.:</b> “Beryllium controls will be implemented for removal of drain piping in according with the approved CBDPP.” Also, LBNL expects Subcontractor to comply with representations made i.e.: “Recent, relevant experience developing and implementing each of the required plans and programs including IWCP Work Packages, Readiness Demonstrations, and Beryllium programs (CBDPP)”.</p>	p.35,37, 52

Description of Proposed Approach	DMS Proposal Page No.
<p><b>Soil around sewer lines to be hand-excavated and soil checked for contamination, i.e.:</b> "Soil will be excavated by hand to expose the vertical portion of the line. The workers will follow the line to where it turns ninety degrees and becomes a horizontal run. At that point, a length of horizontal run will also be completely exposed. If any lines cross the line being exposed, the intersection point will be manually e be placed on plastic adjacent to the pipe run where it will be further characterized. Based on the depth of the line, what the line contained (e.g. electrical conduit versus process piping), and the material of construction of the line, a determination will be made if mechanical means can be used to remove the overburden without damaging the line. If mechanical means are approved, a small excavator or bobcat will be used to remove the overburden to within 4 inches of the top of the pipe. The remaining soil will be removed manually. If mechanical means are not approved, all soil removed manually."</p>	p.37
<p><b>MARSSIM and FSSR, i.e.:</b> "A MARSSIM Final Status Survey will be performed for radiological release of the Building 5 sub-slab and yard areas after completion of radiological and hazardous material removal. Our approach to MARSSIM surveys is shown in Figure 2-16. Prior to conducting the FSS, DMS will hold a collective planning meeting with LBNL's Environment/Health/Safety Division and Radiation Protection Group personnel to confirm the applicable DOE and LBNL programs and procedures ..."</p>	p.38

Specific documents and programs to be prepared by the Subcontractor are described in the Reference Documents. Document and program preparation shall include time for review, comment resolution, re-review and approval. Subcontractor support during LBNL review and approval of Subcontractor-prepared documents and programs shall be provided as needed.

Beryllium was detected above 10CFR850.31 release criteria in several of the Building 5 floor drains. As a consequence of these results, the Subcontractor shall have a Chronic Beryllium Disease Prevention Program (CBDPP) that complies with the requirements of 10CFR850. The Subcontractor will be required to submit for, and receive, LBNL approval of a 10CFR850-compliant CBDPP prior to LBNL issuance of a Notice to Proceed.

Reviews of the Subcontractor's submittals and other deliverables will be performed by LBNL and DOE. Work planning and control shall follow DOE guidance: The Subcontractor shall prepare a project-specific Work Planning and Control program/procedure that complies with DOE "Environmental Management (EM) Work Planning & Control Guidelines" (memorandum from Dr. Steven L. Krahn, Deputy Assistant Secretary for Safety and Security Program, dated April 7, 2010) using a graded approach. It is expected that the project-specific program/procedure will employ a graded application of an Integrated Work Control Program (IWCP).

A work planning and control readiness review will be conducted with the Subcontractor prior to field work; Notice to Proceed will be contingent on passing the review. The readiness review will be performed subsequent to subcontractor document preparation and will include review of

Subcontractor's implementation of programs and plans including initial work control documents (also called work plans or work packages). The review may result in findings requiring subcontractor resolution prior to LBNL issuance of a Notice to Proceed.

Additional Project reviews to be supported by the Subcontractor may include biannual Project performance reviews focusing on cost and schedule performance and bi-annual ES&H reviews focusing on compliance with ES&H program requirements. Any stand-down called by LBNL resulting from Subcontractor's safety violation will be conducted at no cost to the University.

Subcontractor requirements are contained within numerous documents including those flowed down from DOE and LBNL, and the within named Reference Documents, such as the Quality Assurance Project Plan. These requirements include, but are not limited to, areas such as training, reporting, records management, procurement, and quality control.

### **REFERENCE DOCUMENTS**

Inconsistencies among Project documents will be resolved by LBNL. References to a Soil Cleanup Plan are made in various areas of the project documents; for all intents and purposes associated with this project, the Soil Cleanup Plan information is provided in the Soil Management Plan (SMP) and/or the Waste Management Plan (WMP). Document hierarchy will be resolved on a case-by-case basis and will generally be, from highest to lowest, Federal and State laws, DOE Orders, LBNL policies, LBNL programs, Project plans, Project procedures, and then Project guidance documents.

- Documents containing Project requirements include, but are not limited to the following Reference Documents that provide additional Project details and requirements:
  - Demolition Plans (Drawings)
- Project Manual (Specifications)
- Mechanical Deactivation Plan
- Underground Piping Removal Plan
- Hazard Analysis Report
- Soil Management Plan
- Mitigation Monitoring Plan
- Vibration Study
- Waste Management Plan
- Storm Water Pollution Prevention Plan
- Staging & Logistics Plan
- Quality Assurance Project Plan



# EXHIBIT B



### Demob Punch List

Job Number: 1545010  
 Job Name: Old Town Phase I D&D  
 Site Supervisor: Archie Smith / Jonathan Guerrero  
 OPS Project Manager: Nelson Langub

S = Start X = In Progress C = Complete  
 Completed  
 Milestone

Date Updated	Current Week					Notes / Details
	17	18	19	20	21	
10/20/2016	M	T	W	Th	F	
<b>Task</b>						
22: B5 Yard Soil Removal						
Relocate soil & debris stockpile to B92 - FO 14	C				X	DONE
Install extension to sump pipe	C				X	DONE
Excavate LLW coils	C				X	DONE
Move Badger tanks from Road R	C				X	DONE
Relocate CIOH stockpile to B41	C				X	DONE
South yard trench - CDF backfill FO 8	C				X	DONE
FO 13 Solder Pile Wall mercury contamination	C				X	DONE
FO 14 Relocate piles to B52	C				X	DONE
Dismantle and relocate Dewatering System				C	X	DONE
Complete FSS MARSSIM		C			X	BS 12A COMPLETE
<b>DEMOB</b>						
Final Inspection / Punchlist			X			
Punchlist Walkdown					X	
<b>PUNCHLIST</b>						
<b>Uncompleted Work</b>						
B5 retaining wall						Trimming top and cover of opening PHASE II?
Sealand with 150 pit and lead pipe/pig				X		LBNL would like to retain. DONE HEAVY DUTY CASKETS UNDER SEALAND
Soldier pile wall						Placement of pea gravel behind remaining interstitial space east SP 6 to SP 11. PENDING MARSSIM
B52 slab and underground						PHASE II WORK
B5 waste				X		Drums of soil at WAA, supersacks and solid debris piles at B52 (SUPER SACKS) DONE
B41				X		Soil stockpile DONE
<b>Equipment/Materials to Remain</b>						
B40/41				X		SWPPP controls and plastic K-rails - Fire extinguishers to be removed by Northstar. DONE
Road R				X		Baker tanks Dewatering system, plastic K-rails - Backflow preventer to be removed by Northstar. DONE
Temp Electrical - all in general work areas				X		Temp panel, SO carts, cords, spider boxes. DONE
Fencing and stanchions - all in general work areas				X		All fencing and stanchions remaining at project area (Temp fencing - National Construction Rental) DONE
SWPPP BMPs - all in general work areas				X		DONE DAILY
Air monitors - all in general work area perimeters				X		To remain but will be turned off as directed by LBNL
Sealand containing 150 pit and lead pipe/pig				X		LBNL will retain onsite
B52				X		Paptic sacks, absorbents and supersack lifting frame - Empty Super sacks to be removed by Northstar
B16				X		2-Badger tanks, metal ladder, IZRV protection structure - Super sack loading frames and lift to be removed
B5				X		Plastic covering with sandbag weights, metal plates at south and covering benches, and scaffold bridge
B52				X		Rubber mats and eyewash stations to be removed - WAA eyewash LBNL to retain
<b>To Complete by COB Friday</b>						
Relocation of Dewatering System to Road R			X			DONE
B51 Bayview area clearance			X	X		PENDING LBNL CLEARANCE
Remove fencing from B51 Bayview area			X	X		PENDING LBNL CLEARANCE
Demob of excavator				X		
Photodocument field condition and turnover				X		
Provide badges, parking passes, keys				X		
Pack office and leave				X		
Completed DEMOB					M	

*Archie Smith*  
*Doug Brunkow*

Archie Smith, DMS Superintendent  
 Doug Brunkow, LBNL Construction Manager