

Contract No. DE-AC07-97ID13481

SECTION H
SPECIAL CONTRACT REQUIREMENTS

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 TECHNICAL DIRECTION (MAR 1989)

- a. Performance of the work under this contract shall be subject to the technical direction of DOE's COR. The term "technical direction" is defined to include, without limitation:
 - 1. Provision of written information to the Contractor which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - 2. Review and, where required by the contract, approval of technical reports, drawings, specifications and technical information to be delivered by the Contractor to the Government under the contract.

- b. Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction which:
 - 1. Constitutes an assignment of additional work outside the Statement of Work.
 - 2. Constitutes a change as defined in the contract clause entitled "Changes;"
 - 3. In any manner causes an increase or decrease in the total contract price or the time required for contract performance.
 - 4. Changes any of the expressed terms, conditions or specifications of the contract; or
 - 5. Interferes with the Contractor's right to perform the terms and conditions of the contract.

- c. Technical direction shall be issued in writing by the COR, provided, however, that a verbal order to stop work may be issued in accordance with clause H.15 of this contract.

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- d. The Contractor shall proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in b.1 through b.5 above, the Contractor shall not proceed but shall notify the Contracting Officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the Contracting Officer to modify the contract accordingly. Upon receiving the notification from the Contractor, the Contracting Officer shall:
 - 1. Advise the Contractor in writing within thirty (30) days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the "Changes" clause of the contract;
 - 2. Advise the Contractor in writing within a reasonable time that the Government will issue a written change order; or
 - 3. Rescind the questioned technical direction.
- e. A failure of the Contractor and Contracting Officer to agree that the technical direction is within the scope of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of FAR Clause 52.233-1, entitled "Disputes--Alternate I," of Section I of this contract.

H.2 MODIFICATION AUTHORITY (APR 1984)

Notwithstanding any of the other clauses of this contract, the Contracting Officer shall be the only individual authorized to:

- (a) Accept nonconforming work,
- (b) Waive any requirement of this contract, or
- (c) Modify any term or condition of this contract.

H.3 SUBCONTRACT LABOR LAW APPLICATION

- a. For all subcontracts for the manufacture or furnishing of supplies subject to the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), the Contractor shall follow

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those provisions, requirements, and stipulations required by the Act.

- b. For all subcontracts, the principal purpose of which is to furnish services through the use of service employees, in excess of \$2,500.00, and which are subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), the Contractor shall follow those provisions, requirements, and stipulations required by the Act.
- c. For subcontracts relating to construction, refer to applicable construction labor clauses in Section I and the requirements of clause H.11.

H.4 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (JUN 1996)

The Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan submitted by Contractor for this contract, and approved by the Contracting Officer on TBD (NOTE 1) is included at Part III, Section J, Appendix E of this contract. Any required revisions to the Plan shall be accomplished by contract modification.

NOTE 1: This will be completed after subcontracting plan is accepted by the Contracting Officer which will occur prior to award.

H.5 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR (FEB 1990)

The Representations, Certifications, and Other Statements of the Offeror, including team members, are hereby incorporated in and made a part of this contract as shown below:

<u>Company</u>	<u>Date</u>
BNFL Inc.	11/08/96
GTS Duratek	11/08/96
Morrison Knudsen Corporation	11/11/96
Rocky Mtn. Remediation Services, L.L.C.	05/13/96
Science Applications International Corp.	11/08/96

H.6 CONSECUTIVE NUMBERING (MAY 1985)

Due to automated procedures employed in formulating this document, clauses contained within it may not always be consecutively numbered.

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H.7 FEDERAL AND DEPARTMENTAL REQUIREMENTS

The Contractor shall comply with all applicable Federal, state and local laws, statutes, and regulations (unless formal relief to the regulations has been granted by the appropriate regulatory authority).

H.8 (RESERVED)

H.9 LEASE OF INEL LAND FOR THE TREATMENT FACILITY

This clause is applicable to this contract if the treatment facility is located on the INEL.

INEL land used for the location of the treatment facility shall be leased at the rate of \$1.00 per year during contract performance involving the treatment of DOE waste. DOE shall negotiate a separate lease agreement in the event the Contractor requests approval from the Contracting Officer to treat non-DOE wastes. The Contractor shall not assign its interest in all or any portion of the leased land without the prior written approval of the Contracting Officer.

H.10 TREATMENT OF NON-DOE WASTE

The Contractor shall not treat waste from sources other than the Department of Energy.

H.11 IMPLEMENTATION OF THE INEL SITE STABILIZATION AGREEMENT

PROVISIONS FOR CONSTRUCTION CONTRACTS AND SUBCONTRACTS ADMINISTERED BY DOE-ID WHICH ARE SUBJECT TO THE DAVIS-BACON ACT AND PERFORMED ON THE INEL:

- a. The INEL Site Stabilization Agreement (Agreement) consists of a Basic Agreement dated November 1, 1984, signed by Morrison-Knudsen Co., Inc., Catalytic, Inc., and the Building and Construction Trades Department of the AFL-CIO; the Idaho Building and Construction Trades Council; the International Unions affiliated therewith; and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and amendments to the Basic Agreement.

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- b. This clause applies to employees performing work, under contracts or subcontracts administered by DOE-ID which are subject to the Davis-Bacon Act, in the classifications set forth in the Agreement for work performed on the INEL.
- c. Contractors and subcontractors on all tiers who are parties to agreement(s) for construction work performed on the INEL, or who are parties to a national labor agreement for such construction work, shall become signatory to the Agreement and shall abide by all its provisions, including its Appendices A.
- d. Contractors and subcontractors at all tiers who are not signatory to the Agreement and who are not required under paragraph c. above to become signatory to the Agreement, shall pay not less and no more than the wages, fringe benefits, and other employee compensation set forth in Appendices A to the Agreement and shall adhere, except as otherwise directed by the Contracting Officer, to the following provisions of the Agreement:
 - 1. Article VIII Equal Employment Opportunities
 - 2. Article X Nonsignatory Contractor Requirements
 - 3. Article XI Coordinator
 - 4. Article XVI General Work Rules
 - 5. Article XVII Equal Employment Opportunities
 - 6. Article XVIII Application of Appendix A
 - 7. Article XXII Standing Board of Adjustment
 - 8. Appendix A Wage Rates
 - 9. Appendix C Employee Notification
- e. The Contractor agrees that contributions in connection with this contract to Industry Promotion Funds, or similar funds, are unallowable and will not increase the unit prices under this contract.
- f. The obligation of the Contractor and its subcontractors to pay fringe benefits shall be discharged by making payments required by this contract in accordance with the provisions of the amendments to the Davis-Bacon Act contained in the Act of July 2, 1964 (P.L. 88-349-78 Stat. 238-239), and the Department of Labor regulations in implementation thereof (29 CFR, Parts 1, 5).
- g. The Contractor shall pay the amounts for wages, fringe benefits, and other employee compensation as set forth in the INEL Site Stabilization Agreement, including its Appendix A (and amendments to Appendix A as may be made from time to time).

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- h.
 - 1. In the event of failure to comply with paragraphs c., d., e., f., and g. above, or failure to perform any of the obligations imposed upon the Contractor and his subcontractors hereunder, the Contracting Officer may withhold any payments due to the Contractor and may terminate the contract for default.
 - 2. The rights and remedies of the Government shall not be exclusive and are in addition to any other rights and remedies of the Government provided by law or under this contract.
 - i. The requirements in this clause are in addition to, and shall not relieve the Contractor of any obligation imposed by other clauses of this contract, including those entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Payrolls and Basic Records," and "Contract Termination: Debarment."
 - j. The Contractor agrees to maintain its bid or proposal records showing rates and amounts used for computing wages and other compensation, and its payroll and personnel records during the course of work subject to this clause, and preserve such records for a period of three years thereafter, for all employees performing such work. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, and dates and hours of the day within which work was performed, deductions made, and amounts for wages and other compensation covered by paragraphs c., d., e., f., and g., hereof. The Contractor agrees to make these records available for inspection by the Contracting Officer and will permit him/her to interview employees during working hours on the job.
 - k. The Contractor agrees to insert this provision in all subcontracts and lower tier subcontracts for the performance of work subject to the Davis-Bacon Act at DOE-ID administered portions of the INEL.

H.12 INSURANCE AND BONDS

- a. At all times during contract performance, the Contractor shall maintain insurance coverage required by law, direction of the Contracting Officer, and the schedule contained in Section J, Appendix K of this contract ("required insurance"). In addition, the Contractor shall timely obtain any performance and payment bonds required by law or this contract underwritten by sureties acceptable to the Government. The Contractor shall submit to the Contracting Officer certificates of all required insurance and copies of all required bonds. Such evidence of

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insurance provided to the Contracting Officer is solely intended to demonstrate the Contractor's compliance with this clause and is not intended to enlarge or modify the nature of the indemnity nor the limits of liability set forth in this contract.

- b. Except for Workers Compensation and Employers Liability, and Crime, required insurance policies shall name the DOE and the INEL site M&O contractor(s) as additional insured parties (the INEL site M&O contractor(s) shall be named as an additional insured party for Phases II and III only), and shall waive any subrogation rights against the Government, the INEL site M&O contractor(s) (the waiver as to the INEL site M&O contractor(s) shall be required for Phases II and III only), and their agents, employees and assigns. Required insurance shall include coverage for claims made within three (3) years after the completion of contract performance where the acts or omissions giving rise to the claims occurred during contract performance. The Contractor is responsible for any insurance deductibles or co-payments. On a case-by-case basis, the additional insured requirement described in this subparagraph shall not apply in the event the Contractor can establish to the reasonable satisfaction of the Contracting Officer that such coverage is not available through the commercial insurance industry.
- c. The provisions of this clause shall not restrict the right of the Contractor to secure additional pollution liability insurance in connection with the performance of this contract, and include the commercially reasonable cost of such insurance in its contract pricing, provided however, such insurance shall, in accordance with subparagraph b. of this clause, name the Government and the site M&O contractor(s) as additional insured parties.

H.13 IMPLEMENTATION OF SECTION 3161 POLICY

DOE is obligated under Section 3161 of the Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484) to prepare workforce restructuring plans which meet the objectives of Section 3161 and the concerns of affected stakeholders. The Contractor shall comply with all final workforce restructuring plans issued by DOE-ID and other commitments made by DOE regarding the INEL workforce. The Contractor shall not be responsible for increased costs directly associated with its compliance with any additional requirements not presently required in Clause H.26 of this contract or the Fiscal Year 1995-1997 DOE-ID Workforce Restructuring Plan.

H.14 3DEAR 952.227-82 RIGHTS TO PROPOSAL DATA

Except for technical data contained on all pages of the Contractor's proposal dated on or before November 19, 1996 which are asserted by the Contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

H.15 STOP-WORK AND SHUT DOWN AUTHORITY - ENVIRONMENT, SAFETY AND HEALTH

- a. Definition: Stop Work - The suspension of a specific activity or activities by the Contracting Officer or authorized designee based upon conditions which, in the reasonable opinion of the Contracting Officer or authorized designee, are immediately dangerous to the life or health of the workers, the public, or the environment or for any other reason determined to be in the best interests of the Government from either an environment, safety and health (ES&H) perspective or a radiological or nuclear safety perspective. Stop-Work Orders for all other reasons shall be in accordance with the Contract Clause entitled, FAR 52.242-15 STOP-WORK ORDER (AUG 1989).
- b. The Contracting Officer, or authorized designee, may at any time during the performance of this contract issue a stop-work order and shutdown facility operations or stop-work on specific activities of the Contractor or any subcontractor, in accordance with the following:
 - (1) The Contracting Officer shall notify the Contractor, in writing, of any noncompliance with applicable ES&H requirements as described in the ES&H Authorization and/or any applicable Federal statute or regulation. After receipt of such notice, the Contractor shall promptly take such corrective action necessary or appropriate to address the noncompliance. In the event that the Contractor fails to take corrective action, the Contracting Officer or authorized designee may, without prejudice to any other legal or contractual rights of DOE, issue a written 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 Contracting Officer in accordance with applicable DOE Orders/Directive Implementation Instructions, or in accordance with the ES&H Authorization, where it applies.

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- (2) If at any time during performance of the contract work, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the health or safety of individuals or the environment, the Contracting Officer or authorized designee may, without prejudice to any other legal or contractual rights of DOE, issue a verbal order, to be confirmed in writing as soon as reasonably practicable, 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 Contracting Officer in accordance with applicable DOE guidance.
- c. The Contractor shall not be entitled to an extension of time, increase in price, or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause, except to the extent a work stoppage ordered by DOE was without reasonable justification, or the negligence of the Government or the unforeseeable actions or inactions of third parties over which the Contractor has no control, was a contributing cause of the work stoppage.
- d. The authority granted to the Government in this clause shall be reasonably applied.

H.16 PERFORMANCE GUARANTEE

The Contractor's parent organization(s) has provided a performance guarantee in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities of the Contractor shall be satisfactorily fulfilled. The performance guarantee is set forth in Part III, Section J, Attachment G.

H.17 REPORTING REQUIREMENTS

The Contractor shall furnish the report(s) listed on Form F1332.1 "REPORTING REQUIREMENTS CHECKLIST," Section J, Appendix H. Reference DOE Order 1430.1D, Guide DOE G1430.1D-1.

H.18 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

(This Clause Applies Only to Contract Performance Associated with Construction Activities)

- a. The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its price, including but not limited to: (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, roads, and other utilities; (3) uncertainties of weather, river stages, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph does not relieve the Contractor from responsibility for estimating properly the difficulty and price charged for successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.
- b. The Contractor has a continuing duty to notify the Government of any conditions or areas of actual or potential noncompliance with the terms or conditions of this contract or of any law or regulation which it believes could give rise to any civil or criminal liability, and the Contractor has the responsibility to take corrective action, as directed by the Contracting Officer or as required elsewhere in this contract.
- c. The Government is not responsible in any manner (financial or otherwise) for any conclusions or interpretations made by the Contractor based on the information made available by the Government, nor does the Government assume responsibility (financial or otherwise) for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

H.19 TRANSFER OF ENVIRONMENTAL PERMITS

In the event of termination or expiration of this contract, DOE may require the Contractor to transfer some or all environmental permits executed or held by the Contractor, its agents, subcontractors, or assigns, or DOE will assume responsibility for such permits, with approval by the regulating agency, and the Contractor shall be relieved of future liability and responsibility to the extent such liability and responsibility arises from acts that occur subsequent to the permit transfer, and results from the acts or omissions of a successor Contractor, DOE, or their agents, contractors, or assigns.

H.20 PRESERVATION OF ANTIQUITIES, WILDLIFE AND LAND AREAS

Federal Law provides for the protection of antiquities located on land owned or controlled by the Government. Antiquities include Indian graves or campsites, relics and artifacts. The Contractor shall control the movements of its personnel and its subcontractor's personnel at the job site to ensure that any existing antiquities discovered thereon will not be disturbed or destroyed by such personnel. It shall be the duty of the Contractor to report to the Contracting Officer the existence of any antiquities so discovered, and to provide reports, correspondence, or other documents on this matter to DOE. The Contractor shall also preserve all vegetation (including wetlands) except where such vegetation must be removed for survey or construction purposes, and only according to any terms and limits in necessary permits. Furthermore, all wildlife must be protected except for management programs approved by the Contracting Officer.

Except as required by or specifically provided for in other provisions of this contract, the Contractor shall not perform any excavations, earth borrow, preparation of borrow areas, or otherwise disturb the surface soils within the job site without the prior approval of DOE or its designee.

H.21 APPORTIONMENT OF LIABILITY

- a. The Contractor shall reimburse and hold the Government (and the INEL site M&O contractor(s) during Phases II and III only) harmless from the following claims, damages, fines, penalties, administrative and judicial orders, and costs, including litigation costs, counsel fees, judgments and settlements (hereafter "liabilities"):
 - (1) Liabilities which the Contractor and/or an indemnitor have assumed in accordance with the terms of this contract;

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- (2) Liabilities for which the Contractor has failed to obtain or maintain required insurance in accordance with clause H.12 of this contract;
- (3) Liabilities resulting from the denial of full or partial coverage or compensation by an insurer on a claim for damage or loss, except to the extent the proximate cause of the denied claim is an act or failure to act of a third party, the Government, the INEL site M&O contractor(s), or their subcontractors, agents, or assigns (this provision does not affect or waive any claim the Government may have against the insurer);
- (4) Liabilities caused by errors, omissions, or negligence related to the delivery of professional services by or to the Contractor (i.e., directors and officers liability and professional errors and omissions liability);
- (5) Liabilities attributed to the Contractor's failure to comply with any statutory, common law, or regulatory requirement, or schedule ("requirements"), including without limitation requirements pertaining to the Advanced Mixed Waste Treatment Project imposed on the Department of Energy in the (a) INEL Site Treatment Plan and related Consent Order; and (b) the Settlement Agreement and Consent Order issued in Public Service Co. of Colorado v. Batt, No. CV-91-0035-S-EJL (D. ID) and United States v. Batt, CV-91-0054-S-EJL (D. ID); (c) the existing RCRA permit for the RWMC; and (d) the existing INEL site air permit, except to the extent the proximate cause of such liabilities is an act or failure to act of a third party, the Government, the INEL site M&O contractor(s), or their subcontractors, agents, or assigns; PROVIDED HOWEVER, the Contractor's liability under this subparagraph (a)(5) shall not exceed 10% of the total price for the performance of all phases of the work under the contract, completed or executory, including the price for treatment of optional quantities of waste identified in Clause B.3 of the contract to the extent such options have been exercised by the Government;
- (6) Liabilities caused by willful misconduct, lack of good faith, or failure to exercise prudent business, technical, or ES&H (including radiological and nuclear safety) judgment on the part of any of the Contractor's directors, officers, managers, superintendents, or other agents or representatives of the Contractor who have supervision or direction over all or substantially all of the Contractor's operations under this contract, including the withholding of information by fraud or concealment regarding a potential claim which would, in each case, otherwise be covered by required insurance under clause H.12 of this contract;

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- (7) Liabilities resulting from the Contractor's treatment of non-DOE waste, other than non-DOE waste treated at DOE's direction; and
 - (8) Liabilities asserted by the Contractor's subcontractors; suppliers; corporate parents, affiliates or assigns; lending institutions; debtors; or any other persons, lienholders, or entities, except to the extent the proximate cause of such liabilities is an act or failure to act of a third party, the Government, the INEL site M&O contractor(s), or their subcontractors, agents, suppliers, or assigns.
- b. Except for liabilities which are the responsibility of the Contractor in accordance with subparagraph a. of this clause, and further subject to the availability of appropriations and the requirements of this contract, the Government is responsible for, and shall reimburse and hold the Contractor harmless from all other liabilities incurred by the Contractor as a result of its performance of this contract.
 - c. Nothing in this clause is intended to impose upon the Contractor any liability for which it is indemnified under the Price-Anderson Act, as amended.

H.22 SINKING FUND

- a. The total estimated price for facility and GFE RCRA closure is \$9,871,020. The Contractor shall establish an independently managed sinking fund to pay for closure. The Contractor shall pay an amount of \$182/m³ per unit price from Phase III into the sinking fund on a quarterly basis. The sinking fund shall be immune from levy, attachment, or lien for the benefit of any creditor and in no event may be used as an asset in any bankruptcy proceeding, except amounts in the sinking fund may be used for administrative costs to cover any clean up cost of the AMWTP in settlement of the bankruptcy estate. Interest or other earnings shall accrue to the benefit of the sinking fund. Authorized investments must be restricted to direct obligations of the United States or obligations on which the principal and interest are guaranteed by the United States. Any disbursements from the fund will require the prior approval of the Contracting Officer. Establishment of the sinking fund is the responsibility of the Contractor, but DOE reserves the right to communicate with the fund fiduciary and perform audits.
- b. DOE shall be made a party to the sinking fund account, and the account documentation shall provide that (a) DOE or its designee shall succeed to the interests of the Contractor in the event the Contractor does not complete performance of this contract, and (b) in the event the Contractor does not

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complete performance of this contract, other than termination for default, the sinking fund shall be transferred to DOE or its designee to carry out closure activities. DOE or its designee shall perform an independent estimate of the cost of closure as of the date of transfer, and provide this estimate to the Contractor. In the event the sinking fund at the time of transfer exceeds the amount of the estimate, DOE or its designee shall pay to the Contractor the amount of the excess. In the event there is a deficiency in the sinking fund at the time of transfer, the Contractor shall pay into the sinking fund the amount of the deficiency.

- c. The Contractor shall at least annually make adjustments to the sinking fund to reflect the impact of inflation or other factors which significantly affect the estimated cost of closure. If a significant event or occurrence of an unusual nature creates a material impact on the estimated cost of closure, the Contractor shall make adjustments to the sinking fund to reflect the change no later than sixty (60) days after the event or occurrence.
- d. In the event that the Contractor is terminated for default and the total cost of closure exceeds the value of the sinking fund, the Contractor shall be solely responsible for any shortfall and shall remain solely responsible for the cost of closure.
- e. Disagreements between DOE and the Contractor regarding the sinking fund shall be resolved in accordance with the Disputes clause of this contract.

H.23 RESPONSIBILITY FOR PREPARING AND SIGNING ENVIRONMENTAL COMPLIANCE DOCUMENTS

Except where the Government has or shares this responsibility under law, the Contractor shall be (a) solely responsible for preparing all required environmental compliance documents (including without limitation, licenses, permit applications, certifications, permits, and reports) which are necessary for performance of this contract, and (b) the sole signatory on every environmental compliance document which is necessary for performance of this contract.

H.24 SELECTION PROCESS FOR OPTION 1 (PHASES II & III)

This clause applies only in the event two or more contracts have been awarded to perform Phase I of the AMWTP.

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The Government may exercise its unilateral option (Option 1) for completion of Phases II and III of the project no later than 120 days prior to completion of Phase I as scheduled in the approved Project Management Plan. Only one Contractor will be selected to complete Option 1.

An updated proposal and/or performance reports will be solicited during Phase I performance sufficiently in advance to allow DOE time for the Option 1 selection decision. The evaluation criteria which will be used for the Option 1 selection will be furnished within 30 days of contract award.

H.25 OPTION TO TAKE TITLE TO TREATMENT FACILITY

The Government retains the option to take title to the treatment facility (including fixtures and other appurtenant equipment used in the treatment process) in the event the Contractor does not complete contract performance for any reason. In the event this option is exercised by the Government, the Contractor is entitled to negotiate a reasonable amount representing capital expenditures, financing, and related costs incurred during the design, development and construction of the treatment facility which have not been previously recovered by the Contractor. In the event this option is exercised as a result of a termination of this contract for the convenience of the Government, the Contractor shall additionally be entitled to recover such amounts authorized by FAR Clause 52.249-2 "Termination for Convenience of the Government (Fixed Price)."

H.26 WORKER PROTECTION REQUIREMENTS

- a. To the extent the Contractor must supplement its existing non-supervisory work force in order to perform work under this contract, the Contractor shall offer employment for such openings for the work formerly performed by M&O contractor employees according to the following priority:
 - (1) Employees displaced as a result of the award and performance of this Contract who are:
 - A. Within the reduced or eliminated M&O function performing the same work and requiring the same skills for the M&O contractor at the time of displacement shall have first priority.
 - B. Performing work covered by an M&O collective bargaining agreement within the reduced or eliminated M&O function who are not performing the same work for the M&O contractor at the

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time of displacement, but who are nevertheless qualified to fill available job openings that were within the specific reduced or eliminated M&O function shall have second priority. This priority is limited to employees who are within the same specific reduced or eliminated M&O function at the time of displacement and is only for those openings that were: (1) covered by the same M&O collective bargaining agreement or (2) within the work scope of employees covered by the same M&O collective bargaining agreement.

C. (i). Performing work covered by an M&O collective bargaining agreement within the reduced or eliminated M&O function who are not qualified to fill available job openings at the time of displacement, but who agree to become qualified and can become qualified when performance of that work commences shall have third priority. This priority is limited to employees who are within the specific reduced or eliminated M&O function at the time of displacement and is only for those openings that were: (1) covered by the same M&O collective bargaining agreement or (2) within the work scope of employees covered by the same M&O collective bargaining agreement.

(ii). The Contractor shall provide up to sixty (60) calendar days of the required skills training to each employee described in subparagraph 1.C.(i). above. The employee shall be on the Contractor's payroll and on paid time during this Contractor-provided training. However, additional training necessary for the employee to become qualified shall be at that employee's own expense and on the employee's own time.

(2) Qualified employees formerly covered by an M&O contractor collective bargaining agreement who (a) were hired by an INEL M&O contractor on or before September 27, 1991, and (b) have been involuntarily laid off by the M&O contractor for reasons other than the award and performance of this contract shall have fourth priority. This priority is limited to those former M&O contractor employees whose work at the time of lay-off was (1) covered by the same M&O collective bargaining agreement or (2) within the work scope of employees covered by the same M&O collective bargaining agreement, and is further limited to those unfilled Contractor openings which (a) are within the specific reduced or eliminated M&O function, and (b) were either (1) covered by the same M&O collective

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bargaining agreement or (2) within the work scope of employees covered by the same M&O collective bargaining agreement.

- b. After application of the hiring priority described in the preceding paragraph, the Contractor shall comply with preferential hiring requirements contained in work force restructuring plans issued by DOE-ID in filling any remaining job positions before it fills such positions in accordance with its normal business practices. The Contractor shall make no offers of employment under this contract to others until the above preferences have been implemented.
- c. If within six (6) months after the commencement of contract performance, the Contractor creates additional job positions or vacancies occur in the work force performing the work, the Contractor shall fill the job positions in accordance with the hiring priority described in paragraph a. of this clause. The Contractor shall then comply with preferential hiring requirements contained in work force restructuring plans issued by DOE-ID in filling any remaining job positions or other job positions which open during contract performance before it fills such positions in accordance with its normal business practices.
- d. The Contractor shall, as soon as possible after contract award, notify and solicit applications for positions covered by paragraphs a. and b. of this clause. Any offer of employment made in accordance with paragraph a. of this clause shall be made in writing and shall remain open for not less than ten (10) calendar days from the date of receipt of such offer by the employee. Offers of employment shall be made in accordance with INEL seniority or seniority requirements contained in M&O collective bargaining agreements, where applicable.
- e. The Contractor is not required to hire any employee who has been terminated for cause; nor is the Contractor required to delay hiring in order to meet its obligations under this clause if the delay in hiring will negatively impact the Contractor's ability to satisfactorily meet the terms of the contract and the need for immediate hiring is not due to the fault or negligence of the Contractor. Notwithstanding the foregoing, the Contractor will make its best efforts to hire in accordance with the hiring priority set forth in this clause.
- f. Displaced M&O contractor employees covered by the SCA under this contract shall receive wages and benefits established in accordance with SCA wage determinations or any Contractor signatory collective bargaining agreements, as applicable.
- g. For the first year of Contractor employment, DOE will cause to be provided directly to each employee described in paragraph a. of this clause an amount

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which represents, when added to wages and benefits paid and accrued by the Contractor under this contract, equivalent base wages (including any applicable shift differential) and comparable benefits to those paid to the employee at the time of displacement. Beginning with the second year of the contract, such employees shall receive at least the wages and benefits reflected in the SCA wage determination; provided however, that where wages and benefits are established by any applicable negotiated collective bargaining agreement, the collective bargaining agreement shall apply.

- h. With the exception of the treatment function, DOE recognizes that Contractor employees will be performing substantially similar work to that presently being performed by represented M&O contractor employees and that it is likely the Contractor will be a "successor employer" under the NLRA. To the extent permitted by law, it is anticipated that former represented M&O contractor employees who are performing similar work to that performed under the M&O contract will be a separate bargaining unit within the Contractor's workforce.
- i. The Contractor shall provide to DOE such information as may be required in order to ensure full compliance with the requirements of this clause.
- j. Nothing in this clause is intended to supersede applicable requirements of the law, including the FAR as supplemented by the DEAR, or the terms of any applicable collective bargaining agreement, and such conflicting law or collective bargaining agreement shall be controlling.
- k. This clause shall be flowed into all lower tier subcontracts which exceed \$100,000 except subcontracts for the purchase of supplies, equipment or property, or services not subject to SCA requirements.

H.27 PRE-EXISTING CONDITIONS

- a. DOE agrees to reimburse, and the Contractor shall not be held responsible for, any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the Contractor arising out of any site or facility condition or noncompliance, or any other act or failure to act which occurred prior to the Contractor assuming responsibility for the site, facility, or activity. To the extent the acts or omissions of the Contractor cause or add to any liability, expense or remediation cost resulting from conditions or noncompliance in existence prior to the Contractor's

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assumption of responsibility, the Contractor shall be responsible in accordance with the terms and conditions of this contract.

- b. The Contractor shall inspect the facilities, equipment and sites which are or will be under its care, custody and control, and identify to the Contracting Officer, in a timely manner, those pre-existing conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement, or areas of actual or potential noncompliance with the terms and conditions of the contract or applicable law or regulation.
- c. Except for liabilities which are also covered by the clause entitled "Nuclear Hazards Indemnity Agreement," the obligations of the Government under this clause are subject only to the availability of appropriated funds.

H.28 NOTICE OF LITIGATION OR ADMINISTRATIVE CLAIMS

- a. The Contractor and the Government each shall promptly notify the other in the event any suit or action is filed or any claim is made against either, including any proceeding brought by an administrative agency (hereafter "claim"), which involves the performance of this contract. The Government shall also notify the Contractor of any such claim made against the site M&O contractor(s). Upon request, the Contractor and the Government shall furnish copies of the claim, and shall authorize its representatives to collaborate with counsel for the other in settling or defending the claim. In the event the claim involves a liability for which the other party may have full or partial financial responsibility in accordance with the terms of this contract, settlement of the claim shall receive the advance approval in writing of the other party, which shall not be unreasonably withheld.
- b. The Contractor and the Government each shall promptly notify the other when it initiates litigation against third parties, including proceedings before administrative agencies, in connection with this contract. Upon request, the Contractor and the Government each shall furnish the other copies of the litigation, and shall authorize its representatives to collaborate with counsel for the other in pursuing the claim.

H.29 RESERVED

H.30 RESERVED

H.31 RESERVED

H.32 RESERVED

H.33 RESERVED

H.34 COMPLIANCE WITH INEL SITE JURISDICTIONAL AGREEMENT

The Contractor shall comply with the INEL Site Jurisdictional Agreement while performing construction activities under this contract.

H.35 TREATMENT SYSTEM MODIFICATIONS

Prior to substituting, deleting or adding any major treatment systems components shown in Section J, Appendix N, the Contractor shall obtain written approval of the Contracting Officer. Such approval shall not be unreasonably withheld, conditioned, or delayed.

H.36 D&D ACTIVITIES

No earlier than two (2) years prior to the commencement of the treatment facility and GFE decontamination and decommissioning (“D&D”), the Government and the Contractor agree to commence negotiation of a reasonable price to be paid by the Government for D&D activities, provided however, that if the Government and the Contractor are unable to agree on a price for D&D the Government may remove D&D activities from the scope of work for this contract. In the event D&D activities are removed from the scope of work, the Contractor agrees to cooperate with the Government and its contractors in performing D&D, including assisting with the transfer of title to the treatment facility. The Contractor may retain any treatment equipment and fixtures it owns if it agrees to accept full responsibility and cost for their D&D prior to removal from the treatment site and assumes all future liability associated with their use and disposition.

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H.37 WIPP OPENING DATE

The Contractor shall not be responsible for schedule delays and increased costs in the event the Waste Isolation Pilot Plant (WIPP) does not open in time to meet the Contractor's schedule.

H.38 FAILURE TO MEET VOLUME REDUCTION REQUIREMENT

In addition to any other remedies available to the Government under this contract or under law, the prices paid for treatment of Option 1 quantity wastes shall be reduced by one percent for each percentage point by which actual volume reduction is less than the 65% volume reduction requirement, and an additional one percent for each percentage point by which actual volume reduction is less than 50%. The amount of the price reduction shall be determined at the end of each fiscal year and shall be applied on a total contract to date basis. Any price reduction made in accordance with this clause will be withheld in full from the succeeding fiscal year's monthly payment(s) otherwise due to the Contractor for treatment services. Amounts withheld from contract unit prices in accordance with this clause may be reimbursed to the Contractor to the degree that subsequent year-end calculations (computed on a contract start to date basis) show improvement or full achievement of the 65% volume reduction requirement. In the event that a price reduction is payable to the DOE at the end of Option 1 treatment quantities, the price reduction shall be applied to the payments attributable to Option 2 quantities, if Option 2 is exercised by the Government, or to the price of RCRA closure. In determining volume reduction percentages, calculations will exclude metals decontaminated for disposal, certain wastes which may be treated offsite, and soils treated via AMWTP.

H.39 LABOR MANAGEMENT PLAN

The Contractor shall comply with its established Labor Management Plan attached to this contract in Section J, Appendix M.

H.40 TECHNOLOGY VERIFICATION

Those portions of the Contractor's process that have been identified by the Contractor for technology verification must be completed during Phase I. If technology verification results in proposed changes to the Contractor's process, a Results Report summarizing any proposed changes to the Contractor's process and reasonably foreseeable

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environmental impacts from such changes, shall be prepared and submitted for DOE review and approval.

H.41 DOE RIGHT TO OFFSET

If DOE invokes its right to terminate for default and DOE determines that the AMWTP facility and/or site have been contaminated by the Contractor, DOE may seek to recover from the Contractor an amount equal to the anticipated costs necessary to carry out all actions to complete RCRA closure of the facility as described in the Contractor's RCRA Closure Plan.

H.42 DISPOSITION OF INTELLECTUAL PROPERTY - FAILURE TO COMPLETE CONTRACT PERFORMANCE

The following provisions shall apply in the event the Contractor does not complete contract performance for any reason:

- a. Regarding technical data and other intellectual property, DOE may take possession of all technical data, including proprietary data and data obtained from subcontractors, licensors, and licensees, necessary to operate the treatment facility ("facility"), subject to the Rights in Data clause of this contract, as well as the designs, operation manuals, flowcharts, software, etc., construction work in progress, completed facilities, equipment and other property and information necessary for performance of the work or operation of the facility to treat the waste in conformance with the purpose of this contract. Proprietary data will be protected in accordance with the limited rights data provisions of the Rights in Data Clause.
- b.

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enforceability, validity, or scope of, or title to, any rights or patents or other intellectual property herein licensed.

- c. In addition, the Contractor will take all necessary steps to assign permits, authorizations, leases, and any licenses in any third party intellectual property for operations and closure of the facility to DOE or such other third party as DOE may designate.
- d. If the contract is terminated for the convenience of the Government, and the Government is to take ownership of, or operate the facility, or have it operated for the Government, appropriate value for rights in and licenses under any intellectual property embodied in or needed to operate the facility will be negotiated as a part of the costs of the facility included in the proposal for settlement.

H.43 ORDER OF PRECEDENCE

Any inconsistency in this contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) AMWTP ES&H Authorization; (d) contract clauses; (e) other documents, exhibits, and attachments; and (f) the specifications.

For the purpose of apportioning liability in accordance with subparagraph (a)(5) of clause H.21, "Apportionment of Liability," the terms of this contract shall control in the event they conflict with the terms of the Settlement Agreement and Consent Order issued in Public Service Co. of Colorado v. Batt, No. CV-91-0035-S-EJL (D. ID) and United States v. Batt, CV-91-0054-S-EJL (D. ID).

H.44 TITLE OF PROPERTY

It is understood and stipulated that any equipment, facilities, and/or systems manufactured or purchased by the Contractor under this contract are not deliverable items. The Contractor shall retain title to all such equipment, facilities, and systems. Nothing in this clause shall supersede or affect the Government's rights established in Section H Clause entitled "OPTION TO TAKE TITLE TO TREATMENT FACILITY."

H.45 TERMINATION SETTLEMENT

Notwithstanding the *Termination for Convenience* Clause in Section I, *Contract Clauses*, additional rights and responsibilities of the parties are specified in this Clause to effect the

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termination settlement. In the event of a termination for convenience, the Contractor's allowable costs will include financing costs and those legal, underwriter, third party credit support, and other professional fees directly related to obtaining financing. Such costs must also be reasonable, allocable, and not conflict with any other cost principle under FAR 31.2. This Clause constitutes an authorized deviation from FAR 31.205-20 as it would pertain to a termination for convenience.

H.46 FIXED PRICE REDETERMINATION

The prices for waste treatment services identified in Section B of this contract shall be adjusted after the processing of the first 25,000 cubic meters in accordance with Section I, *Contract Clauses*, FAR 52.216-5, *Price Redetermination-Prospective (October 1995)*. However, in no event shall the prices, identified in Section B of this contract be considered "ceiling prices" within the meaning of FAR 52.216-5, paragraph (a)(2). Prices may be adjusted upwards or downwards in accordance with the requirements of FAR 52.216-5 and this clause.

H.47 CHANGES TO APPROVED ES&H AUTHORIZATION

1. The Contractor shall submit its baseline ES&H Program Operating Plan as a Phase I deliverable in accordance with Statement of Work Paragraph C.13.
2. Upon DOE review, the Contractor and DOE shall commence negotiations in accordance with the process defined in Section J, Appendix D. Upon completion of this process, the ES&H Authorization will represent the initial baseline of requirements for the performance of this contract. From this point forward all changes to the baseline will be accomplished by modification to the contract.
3. Changes to the baseline shall be treated in the following manner:
 - a. In the event the DOE imposes additional requirements upon the Contractor, the Contracting Officer shall formally transmit the requirement to the Contractor for implementation.
 - b. The Contractor, upon receipt of the Contracting Officer's request, shall review the changed requirement for consistency with other terms of this contract, operational and funding impacts. If the new requirement does not cause a material change to the terms and conditions, Contractor operations or impact price, the Contractor shall so inform the Contracting Officer of the Contractor's implementation plan within thirty (30) calendar

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days of receipt. The Contracting Officer shall approve all implementation plans which exceed three (3) months.

- c. In the event the Contractor considers the changed requirement to be material, the Contractor shall notify the Contracting Officer within thirty (30) calendar days of receipt. Such notice shall include the basis for the claimed impact to the contract terms. After evaluation of the Contractor's position, the Contracting Officer shall issue direction to the Contractor, pursuant to the clause entitled "Changes," concerning the appropriate implementation of the changed requirement.

H.48 CONTRACT ASSUMPTIONS

Each assumption listed in Section J, Appendix P of this contract is considered to be material to contract performance, and shall form the basis for considering an equitable adjustment requested under the changes clause of this contract provided the assumption does not occur for reasons outside of the fault, negligence, or control of the Contractor. The listed assumptions are not intended, nor should they be construed, to modify or relax any other specification, term, or condition of this contract.

H.49 PROJECT FINANCING

The Government shall assist the Contractor as necessary to secure adequate project financing from the private sector. It will not be considered a termination for default if project financing is not available from the private sector and/or the corporate parent for reasons outside of the control of the Contractor.