

**CONFORMED CONTRACT as of 12/19/05
FOR INFORMATIONAL PURPOSES ONLY**

DE-AC07-99ID13727

SECTION H

SPECIAL CONTRACT REQUIREMENTS

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SPECIAL CONTRACT REQUIREMENTS

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SECTION H

SPECIAL CONTRACT REQUIREMENTS

H.1 TECHNICAL DIRECTION

- (a) Performance of the work under this contract shall be subject to the technical direction of DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - (1) Directions to the Contractor which redirect the contract effort, shift work emphasis between work areas or tasks, require pursuit of certain lines of inquiry, fill in details or otherwise serve to accomplish the contractual Statement of Work.
 - (2) Provision of written information to the Contractor, which assists in the interpretation of drawings, specifications or technical portions of the work description.
 - (3) 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 estimated contract cost, the fee (if any), 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) All technical direction shall be issued in writing by the COR.
- (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

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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.
- (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 the clause entitled "Disputes--Alternate I."

H.2 MODIFICATION AUTHORITY

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 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 the Clause in Section I entitled Government Facility Subcontract Approval.

H.4 SMALL BUSINESS SUBCONTRACTING PLAN

The master Small Business Subcontracting Plan submitted by the Contractor and approved by the Contracting Officer (via contract award) is incorporated into this contract as Section J, Attachment D. Required annual Plans and any revisions thereto shall be approved by the Contracting Officer and incorporated into the contract by a separate contract modification. Plans shall provide strong consideration for local and Idaho businesses.

H.5 REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF THE OFFEROR

The Representations, Certifications, and Other Statements of the Offeror submitted with the offer for this contract are, by reference, hereby incorporated in and made a part of this contract.

H.6 RESERVED (DELETED by Modification M116, dated 4/22/05)

H.7 BUSINESS UNIT

The work performed by the Contractor under this contract shall be conducted by a separate business unit (separate corporation, division, segment, joint venture, etc.) which will be totally responsible for all contract activities and will present one face to the Government.

H.8 CONFLICTS OF INTEREST COMPLIANCE PLAN

The Contractor shall submit a Conflicts of Interest (COI) Compliance Plan to the Contracting Officer for approval within 90 days after the effective date of this contract. The Plan should address the Contractor's approach for adhering to the Section I Clause entitled DEAR 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997) (ALTERNATE I) and establish procedures for aggressively self-identifying and avoiding or mitigating both organizational and employee conflicts of interest arising out of the performance of this contract. The overall purpose of the Plan is to demonstrate how the Contractor will assure that its operations are free from conflicts of interest or that identified conflicts are effectively mitigated. The Plan should include a commitment that the Contractor will conduct its entire operation in a manner that is in the best interests of the Government and the Department of Energy. The overall approach should prohibit the compromise of the Contractor's decision process relating to program direction, acquisition, licensing, and related functions where COI often arise. The Plan should prohibit unfair advantage to the Contractor's affiliates and should assure that the Contractor is able to maximize contract performance, prevent disclosure of information needing protection, render impartial and objective assistance and advice to the Department of Energy, and make decisions that are impartial with regard to self-interest. The Plan may include directives or describe how and when the directives will be created. The Plan should include, at a minimum:

- (a) The procedures for identifying and evaluating potential COI of past, present, and anticipated contracts or business arrangements of the Contractor and its related entities;
- (b) The procedures the Contractor will utilize to identify employee COI;
- (c) The procedures for developing avoidance or mitigation plans when needed and criteria for seeking DOE approval of the plans;
- (d) The procedures the Contractor will utilize to oversee, implement, and update, the COI plan, to include assigning responsibility for management, oversight, and compliance to an individual in the Contractor's organization with full authority to implement the plan;

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- (e) The procedures for ensuring that all required subcontractor disclosures and factual analyses are timely prepared and, when required, submitted to DOE;
- (f) The procedures for protecting information;
- (g) The procedures for COI training; and
- (h) The disciplinary mechanisms to be used by the Contractor.

Note: No fee may be drawn from the special financial institution account or otherwise paid to the Contractor under this contract until the Plan contemplated above is submitted by the Contractor and approved in writing by the Contracting Officer. The approved plan will be incorporated into the contract as Section J, Attachment H.

H.9 PERFORMANCE GUARANTEE AGREEMENT

The Contractor's parent organization(s) has (have) provided a Performance Guarantee Agreement in a manner and form acceptable to the Contracting Officer assuring the performance, duties, and responsibilities of the Contractor will be satisfactorily fulfilled. The Performance Guarantee Agreement is set forth in Section J, Attachment F.

H.10 PUBLIC RELEASE OF INFORMATION

- (a) The Contractor shall be responsible for developing, planning and coordinating proactive approaches to dissemination of timely information regarding DOE unclassified activities. This will be accomplished through coordination with DOE. Proactive communications or public affairs programs will include or make use of a variety of tools, among them open houses, newsletters, press releases and/or conferences, audio/visual presentations, speeches, forums, and tours. The responsibility will be carried out in such a manner that the public, whether it is the media, citizen's groups, private citizens or local, state or Federal Government officials, has a clear understanding of DOE activities at the INEEL.
- (b) The Contractor shall be responsible for following established DOE procedures for clearances on all oral, written and audio/visual informational material prepared for public use.

H.11 RESERVED (DELETED by Modification M116, dated 4/22/05)

H.12 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

- (a) The Contractor is responsible to identify and safeguard all Unclassified Controlled Nuclear Information (UCNI) in accordance with 10 CFR 1017 and DOE regulations and requirements. This responsibility applies to all UCNI in the Contractor's possession in connection with the performance of work under this contract.
- (b) UCNI is defined as certain unclassified Government information prohibited from unauthorized dissemination under Section 148 of the Atomic Energy Act, as amended.

H.13 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI) - SUBCONTRACTS

NOTE: This clause is applicable when the Contractor issues solicitation documents containing UCNI to prospective subcontractors.

- (a) Some documents utilized in the performance of the Project Management function described in Section C, Statement of Work, of this contract, and essential to subcontractors planning to bid on or perform selected projects may contain Unclassified Controlled Nuclear Information (UCNI), as defined in Section 148 of the Atomic Energy Act of 1954 (the Act), as amended, and will be so marked and protected pursuant to the DOE Order entitled "Unclassified Controlled Nuclear Information". Consequently, Contractor solicitation documents, including drawings, specifications, or other documents/materials containing UCNI, can only be made available to authorized individuals who, for purposes of this clause, shall mean only U.S. citizens who have a need-to-know the specific UCNI in the performance of official duties or of DOE-authorized activities, and include employees of a prospective Government contractor or subcontractor for the purpose of bidding on selected projects or other persons authorized under the DOE Order entitled "Unclassified Controlled Nuclear Information" to be granted access to specific UCNI. Contractor solicitation documents and other documents or material containing UCNI will be available for viewing in those plan rooms which accept responsibility for obtaining certification that any prospective subcontractor requesting such documents or materials containing UCNI is a U.S. citizen with a specific need-to-know, and include employees of a prospective Government project. Contractor solicitation packages containing UCNI shall be available for viewing at an appropriate location indicated in the Contractor's solicitation package, subject to certification that the viewer is a U.S. citizen and an employee of a prospective Government contractor or subcontractor for the purpose of bidding on the project or is otherwise authorized access to the specific UCNI under the DOE Order entitled "Unclassified Controlled Nuclear Information". Persons receiving Contractor solicitation documents or other documents/materials containing UCNI shall be obliged under penalty of law to treat the UCNI contained in such documents/materials pursuant to the instructions that accompany these documents/materials as required by the DOE Order entitled "Unclassified Controlled Nuclear Information".
- (b) The Contractor shall notify each person granted access to specific UCNI of applicable regulations and orders concerning UCNI, and of any physical protection requirements and special redistribution limitations, as required by the DOE Order entitled "Unclassified Controlled Nuclear Information" and 10 CFR 1017.
- (c) Subsection b.(1) of section 148 of the Act provides that persons violating regulations or orders of the Secretary of the Department of Energy with respect to the unauthorized dissemination of UCNI shall be subject to a civil penalty not to exceed \$100,000 for each violation.
- (d) The following notice will be added to the cover sheets of documents/materials, including the specifications and drawings when UCNI may be applicable to the project:

NOT FOR PUBLIC DISSEMINATION

MAY CONTAIN

UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

SUBJECT TO SECTION 148 OF THE ATOMIC ENERGY ACT, AS AMENDED
(41 USC 2168)

APPROVAL BY THE DEPARTMENT OF ENERGY PRIOR TO RELEASE IS REQUIRED

H.14 SOURCE AND SPECIAL NUCLEAR MATERIALS

The Contractor shall comply with all applicable regulations and instructions of DOE relative to the control of and accounting for source and special nuclear material (as those terms are defined in the Atomic Energy Act of 1954). For the source and special nuclear materials being stored in NRC regulated facilities, the applicable NRC regulations and instructions shall apply instead of the DOE requirements. The Contractor shall make such reports and permit such inspections as the applicable DOE or NRC regulations may require with reference to source and special nuclear materials. The Contractor shall take all reasonable steps and precautions to protect such materials against theft and misappropriations and to minimize all losses of such materials.

H.15 STOP-WORK AND SHUTDOWN AUTHORITY (M&O CONTRACT)

NOTE: In comparison to FAR 52.242-15, Stop Work Order – Alternate I, contained in Section F, this clause allows DOE employees, designated by the Contracting Officer, the right to stop work due to environmental, safety, and health reasons. The clause at FAR 52.242-15 allows only the Contracting Officer to shutdown facilities and can be for reasons other than environment, safety, and health.

- (a) Definition: Stop-Work - The suspension of a specific activity or activities by the Contracting Officer or authorized designee based on the determination or observation of conditions which are immediately dangerous to the life or health of the workers, the public, or the environment.
- (b) Authority: As contemplated by the clause in Section I of this contract entitled INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION, the Contracting Officer or authorized designee may at any time during the performance of this contract shutdown facility operations or stop-work on specific activities of the Contractor.
- (c) The Contractor shall insert a clause, modified appropriately to substitute Contractor representatives for the Contracting Officer or authorized designee, in all subcontracts containing the above-cited INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION clause.

H.16 RESPONSIBILITY FOR EXISTING CONTRACTUAL AND OTHER AGREEMENTS

Existing contractual agreements entered into by the incumbent contractor will be assigned to the Contractor upon the effective date of this contract. The contractual agreements shall include: (a) all subcontracts and purchase orders, (b) cooperative research and development agreements, (c) consent orders, (d) regulatory agreements and permit requirements, collective bargaining agreements, the Site Stabilization Agreement, lawsuits and other litigation matters and (e) other agreements in effect upon execution of this contract. The Contractor shall accept transfer and assume responsibility

and accountability for assignment of existing commercial and regulatory obligations of the incumbent contractor.

H.17 GOVERNMENT-OWNED PROPERTY AND EQUIPMENT

Upon effective date of this contract, the Contractor shall accept the transfer of and accountability for Government-Owned property and equipment, including special nuclear material from the following contracts. Any government-owned property or equipment that the Contractor cannot accept due to it not being accounted for and the survey not being complete will be identified by the Contractor and provided to the Contracting Officer.

DE-AC07-94ID13223 with Lockheed Martin Idaho Technologies Company
DE-AC07-94ID13299 with Lockheed Martin Idaho Technologies Company
DE-AC07-96ID13425 with the Public Service Company of Colorado (effective upon transfer of the NRC license).

H.18 RESERVED (DELETED by Modification M116, dated 4/22/05)

H.19 RESERVED (DELETED by Modification M116, dated 4/22/05)

H.20 PATENT INDEMNITY - SUBCONTRACTS

Except as otherwise authorized by the Contracting Officer, the Contractor shall obtain indemnification of the Government and its officers, agents, and employees against liability, including costs, for infringement of Letters Patent (except Letters Patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) from the Contractor's subcontractors for any contract work subcontracted on the terms and in accordance with the Federal Acquisition Regulations (FAR) as may be supplemented by the Department of Energy Acquisition Regulations (DEAR).

H.21 WORKFORCE TRANSITION AND HUMAN RESOURCE MANAGEMENT

In order to: (i) achieve an orderly transition; (ii) be fair to incumbent employees; (iii) maintain a productive and flexible workforce; and (iv) minimize the impacts to other DOE programs, the Contractor shall adhere to the following requirements in its human resource management actions:

(a) Employee Transition and Continuity of Employment

At the time the Contractor becomes responsible for the work, all current incumbent non-supervisory/non-management employees of Lockheed Martin Idaho Technologies Company (LMITCO) and those employees from LMITCO's Teaming Partner subcontractors who are and have been fully dedicated to the INEEL programs* will become employees of the new Contractor and remain in their current positions upon contract take over.

All supervisory/management employees below the third level (VP level) will become employees of the Contractor; however, it is not mandatory that they remain in their current position or at their current level. Any changes in position

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or job classification shall be accompanied by alterations in compensation commensurate with the change in position.

Continued employment of employees at the third level and above on the organization chart (Vice President level and above) is at the discretion of the Contractor.

Note: Refer to Section J, Attachment M – LMITCO List of Key Personnel Vice-President and Director Level.

<p>* LMITCO Teaming Partner subcontractors include: Babcock and Wilcox Idaho, Inc., Coleman Research Corporation, Duke Engineering and Services, Inc., Parsons Engineering Science, Inc., and Rust-Waste Management Federal Services of Idaho.</p>
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(b) Pay and Benefits

In order to minimize unnecessary disruption to the existing workforce, and to minimize severance costs, incumbent contractor non-represented, non-management employees who transfer to the Contractor shall retain substantially equivalent pay and benefits. All represented employees will retain pay in accordance with collective bargaining agreements. The Contractor shall maintain the existing LMITCO INEEL Pension, Investment, Health & Welfare, and Leave of Absence Programs.

The Contractor shall become the sponsoring employer for the site-wide pension and investment plans and shall have the responsibility for administering and maintaining their qualified status.

The Department is studying options in the design of the current site-wide INEEL defined benefit pension plan and defined contribution pension plan to insure/improve consistency with the INEEL Business Model while protecting comparability for incumbent employees affected by initiatives such as privatization and outsourcing, to the extent practicable. The Contractor shall be responsible for the implementation and administration of any revisions to the plans and should be prepared to begin this review during the transition period.
(Mod M073 1/27/03)

(c) Continuity of Service Credit

All LMITCO employees as well as employees of LMITCO's Teaming Partners who are currently in the site-wide benefit plans, will maintain their current service credit date for benefit earnings. Employees of Teaming Partner Companies who are not currently members of the Site Benefit Plans will have their service credit determined by the DOE Contracting Officer at the time of transition.

(d) Labor Relations Issues

The Contractor shall maintain positive labor-management relations. The Contractor shall respect the right of employees to self-organize, to form, join or assist the labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and also to have the right to refrain from any or all of such activities.

As the Contractor will be responsible at the time of transition for performing substantially the same operations at the INEEL as the incumbent contractor, and for hiring all of the current incumbent contractor non-management employees who are represented by OCAW Local 2-652, IBT Local 983, UPGWA Local 3, and ATU Local 1517, the Contractor shall be obligated to recognize the current bargaining agents and their existing collective bargaining agreements.

Contractors and subcontractors on all tiers who are parties to agreement(s) for construction work performed on the INEEL, or who are parties to a national labor agreement for such construction work, shall become signatory to the INEEL Site Stabilization Agreement and the Site Construction Jurisdictional Procedural Agreement. This requirement applies to employees performing work, under contracts or subcontracts administered by DOE-ID which are subject to the Davis-Bacon Act, and is in addition to and shall not relieve the Contractor of any obligation imposed by other clauses of this contract including the Davis-Bacon Act.

The Contractor shall pay the amounts of wages, fringe benefits, and other employee compensation as set forth in the INEEL Site Stabilization Agreement, including its Appendix A (and amendments to Appendix A as may be made from time to time).

(e) Advanced Understandings

DOE intends to reach advanced understandings with the Contractor on both personnel costs and related expenses. These understandings, in advance of cost incurrence, avoid subsequent disputes in cost categories where reasonableness or allowability may be difficult to determine. The Contractor shall adopt and implement Section J, Attachment A that covers personnel costs and related expenses. Proposed changes to Section J, Attachment A will require approval of the Contracting Officer. Section J, Attachment A is incorporated into this contract.

H.22 RESERVED (DELETED by Modification M116, dated 4/22/05)

H.23 PRESERVATION OF ANTIQUITIES, WILDLIFE, AND LAND AREAS

Federal law provides for the protection of antiquities located on land owned or controlled by the U.S. 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 the existence of any antiquities so discovered. The Contractor shall also preserve all vegetation except where such vegetation must be removed for survey or construction purposes. Further, all wildlife must be protected.

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.24 LEGAL DEFENSE AND REIMBURSEMENT OF CONTRACTOR PROTECTIVE FORCE OFFICERS

- (a) It is Government policy to defend, or have an employing Contractor defend, any Contractor protective force officer if a claim or legal action is brought against the officer as a result of that officer's conduct when performing arrest duties within the scope of employment, as authorized by Section 161.k of the Atomic Energy Act, in a reasonable and justifiable manner. Standards for performance of arrest duties are set forth in 10 CFR Part 1047. The Contractor shall inform each protective force officer of these provisions and obtain his or her agreement to such of these provisions as would apply to the individual officer's rights or obligations.
 - (1) The Contractor shall give the Contracting Officer immediate notice in writing of any action or claim filed arising out of the protective force officer's conduct when performing arrest duties.
 - (2) Except as otherwise directed by the Contracting Officer in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor or the protective force officer with respect to such action or claim.
 - (3) To the extent not in conflict with any applicable policy of insurance, the Contractor with the Contracting Officer's approval, may settle any such action or claim; shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the protective force officer's rights and claims (except those against the Government) arising out of any such action or claim against the protective force officer; and if required by the Contracting Officer, shall authorize a representative of the Government to settle or defend any such action or claim and to represent the protective force officer in, or to take charge of, any action.
 - (i) If the Government undertakes the settlement or defense of an action or claim against the protective force officer, the Contractor and the officer shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

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- (ii) Where an action against a protective force officer is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith and, in such event, the resulting defense and settlement expenses shall be reimbursable under the contract, provided, however, that the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.
- (4) The Government shall reimburse the Contractor for payment of any financial liability found against the Contractor or for payment by the Contractor of any financial liability found against any protective force officer individually if, in the judgment of DOE, that officer was performing arrest duties within the scope of employment in a reasonable and justifiable manner (see 10 CFR Part 1047). The Contractor shall advise protective force officers of the appropriate procedure(s) for obtaining Contractor payments for any such financial liability judgment found against the officer.
- (b) Contractor expenses incurred for the defense and settlement of a legal action and/or financial liability payments made pursuant to (a)(3)(ii) and (a)(4) shall be reimbursed as allowable costs under the contract. DOE's liability under this provision shall be limited to the amount of funds obligated under the contract. Where necessary as determined by the Contracting Officer, the amount obligated for the contract will be appropriately revised, subject to the availability of appropriated funds for such costs.
- (c) The Contractor and each subcontractor shall make this policy applicable to any lower-tier subcontractors who either provide protective force officers or employ protective forces on a contractual basis.
- (d) The following type of statement shall be obtained from each employee agreeing to each of the provisions as would apply to an individual officer's rights or litigation. The Contractor shall retain copies of these statements.

"I have been informed by the agreement between the Department of Energy and my employer regarding legal representation and reimbursement of protective force officers. I agree to such of the provisions of that agreement as would apply to my rights and obligations in the event of a legal action or claim brought against me.

Name:

Date: "

H.25 WORK AUTHORIZATION CONTROL SYSTEM

Each fiscal year, the U.S. Department of Energy (DOE) will issue Work Authorizations in accordance with DOE Order 5700.7C, "Work Authorization System" and Approved Funding Programs to the Contractor. All work performed by the Contractor shall be

consistent with Approved Funding Programs approved and revised by the Contracting Officer or designee from time to time.

H.26 RESERVED (DELETED by Modification M116, dated 4/22/05)

H.27 UNEARNED FEE

Except as allowed in the Section I clause entitled TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT or as may be expressly stated within the text of a specific fee incentive, unearned fee cannot be carried over or used to fund incentive arrangements of this contract.

H.28 AGE DISCRIMINATION IN EMPLOYMENT

The Contractor shall not discriminate against any employee, applicant for employment, or former employee on the basis of age. The Contractor shall comply with the Age Discrimination in Employment Act, with any state or local legislation regarding discrimination based on age, and with all applicable regulations thereunder.

H.29 LITIGATION MANAGEMENT PLAN

The Contractor shall prepare a Management of Litigation Plan that shall be submitted to the Contracting Officer for approval within 180 days of contract award. The purpose of the plan will be to control the cost of litigation and implement the DOE policy favoring the use of Alternative Dispute Resolution (ADR) techniques where appropriate and beneficial to the Government. The plan will be revised from time to time to conform to litigation management and ADR policies established by DOE.

H.30 RESERVED (DELETED by Modification M116, dated 4/22/05)

H.31 CREATION OF PERFORMANCE-BASED INCENTIVES PROCESS

As part of the process of identifying appropriate performance baselines, performance measures, specific performance goals, outcomes, and commensurate financial compensations, the following factors as a minimum shall be considered:

- (a) Fee distribution among various components of fee and incentives is a unilateral right of the DOE.
- (b) Cost benefit to the DOE, i.e., potential incentive fee compared with the value to be gained by the DOE for Contractor success in performance of the incentive. Likewise, disincentives or loss of fee for poor performance should reflect the relative value loss to the Government.
- (c) Performance incentives should be structured to motivate the Contractor to make achievements or improvements beyond what has been the status quo or expected level of performance in the past.

- (d) Appropriate balance between the budget for the proposed incentive program or area and the amount of incentive fee that is made available to be earned.
- (e) Appropriate balance between the risk, benefit or complexity of the proposed incentive program or area and the amount of incentive fee that is available to be earned.
- (f) Each programmatic incentive will contain a cost constraint or balancing cost incentive.
- (g) Wherever possible, historical data, if deemed appropriate, will form the basis of the incentive goals and measures.
- (h) A preference for keeping performance measurement methodologies and fee earning methodologies as simple as possible and realistic when considering the administrative burden of establishing and tracking baselines, measures and results.
- (i) A mutually agreed upon change control process shall be developed for purposes of revising established performance measures and goals in response to changes in Contracting Officer direction or priority.
- (j) It is understood that in performance of this contract, the goal is to increase significantly the amount of total available fee that is allocated and earned through appropriately structured performance-based incentives. To the maximum extent possible, these incentives will be mutually agreed to by the Contractor and DOE. Should good faith negotiations fail to result in mutual agreement, the Government reserves the right to unilaterally establish performance-based incentives in the Contractor's Performance Evaluation and Measurement Plan (See Section I Clause entitled DEAR 970.5204-54 TOTAL AVAILABLE FEE: BASE FEE AMOUNT AND PERFORMANCE FEE AMOUNT).

H.32 ALLOCATION OF RESPONSIBILITIES FOR CONTRACTOR ENVIRONMENTAL COMPLIANCE ACTIVITIES

This clause allocates the responsibilities of the Department of Energy (DOE or the Government) and the Contractor, referred to collectively as 'the Parties' for implementing the environmental requirements at facilities within the scope of the Contract. In this clause, the term 'environmental requirements' means requirements imposed by applicable Federal, state and local environmental laws and regulations, including, without limitation, statutes, ordinances, regulations, court orders, consent decrees, administrative orders or compliance agreements, consent orders, permits, and licenses.

- (a) Purpose and Scope.

The central purpose of this section is to implement the intent of the Parties that liability and responsibility for civil fines or penalties arising from or related to violations of environmental requirements be borne by the Party that caused the violation. This clause resolves liability for fines and penalties though the cognizant regulatory authority may assess such fine or penalty upon either Party or both Parties without regard to the allocation of responsibility or liability under this Contract. The allocation of liability for such fine or penalty is effective regardless of which Party signs permit applications, manifests, reports or other

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required documents, is a permittee, or is the named subject of an enforcement action or assessment of a fine or penalty.

(b) Enforcement Actions and Liability for Fines and Penalties.

Regardless of which Party to this Contract is the named subject of an enforcement action for noncompliance with environmental requirements by the cognizant regulatory authority, liability for payment of any fine or penalty will be governed by provisions of this Contract related to allowable costs. If the named subject of an enforcement action or assessment of a fine or penalty is the Contractor, the Contractor may seek reimbursement from DOE; and DOE will determine whether the cost of the fine or penalty is reimbursable pursuant to the allowable cost and preexisting conditions provisions of this Contract and reimburse the Contractor when appropriate. If the named subject of an enforcement action or assessment of a fine or penalty is DOE and the fine or penalty would not otherwise be reimbursable under the allowable cost and preexisting conditions provisions of this Contract if the Contractor was the named subject of the enforcement action, the Contractor will either pay the fine or penalty or reimburse the DOE (if DOE pays the fine or penalty). The governing provisions of the Contract include, without limitation, paragraph (e)(12) of Section I clause entitled ALLOWABLE COSTS AND FEE (MANAGEMENT AND OPERATING CONTRACTS) (DEAR 970.5204-13) and Section I Clause entitled PREEXISTING CONDITIONS (DEAR 970.5204-75).

(c) Signature of Permit Applications and other Regulatory Documents

(1) Consistent with the Section I Clause entitled "Permits or Licenses" (DEAR 970.5204-29), the Contractor must obtain any licenses, permits, other approvals or authorizations for conducting activities on the INEEL. The Contractor is responsible for complying with all permits, licenses, certifications, authorizations and approvals from federal, state, and local regulatory agencies that are necessary for operations under this Contract (hereinafter referred to collectively as 'permits'). Except as specifically provided in the section and to the extent not prohibited by law or cognizant regulatory authority, the Contractor (or, if applicable, its subcontractors) will be the sole applicant for any such permits required for its activities. The Contractor must take all appropriate actions to obtain transfer of existing permits, and DOE will use all reasonable means to facilitate transfer of existing permits. If DOE determines it is appropriate or if DOE is required by cognizant regulatory authority to sign permit applications, DOE may elect to sign as owner or similar designation, but the Contractor (or, if applicable, its subcontractors) must also sign as operator or similar designation reflecting its responsibility under the permit unless DOE waives this requirement in writing.

(2) The Contractor must submit to DOE for DOE's review and comment all permit applications, reports or other documents required to be submitted to cognizant regulatory authorities. Such draft documents must be provided to DOE within a time frame, identified by DOE, sufficient to allow DOE substantive review and comment; and DOE will perform such substantive review and comment within such time frame. When providing DOE with documents that are to be signed or co-signed by DOE, the Contractor will accompany such document with a certification statement, signed by the appropriate Contractor corporate officer, attesting to DOE that the document has been prepared in accordance

with all applicable requirements and the information is, to the best of its knowledge and belief, true, accurate, and complete.

- (3) Except as specifically provided in this clause and to the extent not prohibited by law or cognizant regulator authority, the Contractor (or, if applicable, its subcontractors) will be the signatory for reports, hazardous waste manifests, and other similar documents required under environmental permits or applicable environmental laws and regulations.

H.33 BUSINESS COOPERATION

It is the Department's objective to better integrate its various program activities as they are implemented through its major contracts. Accordingly, the Contractor acknowledges the importance of fostering a working environment where scientific, technical, and business innovation and lessons learned are shared among other DOE sites that may be operated by the Contractor or its parent organizations and, except where proprietary information is involved, among other sites in the DOE complex. The Contractor further recognizes that the exchange of ideas and systems solutions among scientists, engineers, and administrators at and among the sites and with colleagues within the Contractor's parent organization, is vital to the success of the scientific, engineering, and administrative work performed by the Contractor. Finally, the Contractor recognizes its role in ensuring that the overall costs of operating DOE site management contracts are minimized by reducing duplication of activities among the DOE sites, sharing resources and applications of business solutions, and resolving common problems in a collaborative manner. Accordingly, the Contractor agrees to work collaboratively with DOE and other DOE contractors to achieve these objectives.

H.34 RESPONSIBLE CORPORATE OFFICIAL

Notwithstanding the provisions of the clause entitled "Performance Guarantee Agreement" in Section H, the Government may contact, as necessary, the single responsible corporate official identified below, who is at a level above the Contractor and who is accountable for the performance of the Contractor, regarding Contractor performance issues. Should the responsible corporate official change during the period of the contract, the Contractor shall promptly notify the Government of the change in the individual to contact.

Name: Thomas F. Hash
Position: President
Organization: Bechtel National Inc.
Address: 333 Market Street, 15th floor
San Francisco, CA 94105
Phone: (415) 768-1740
Fax: (415) 768-4100
E-mail: tffhash@bechtel.com

(M023, 8/30/00)

H.35 MULTI-YEAR FEE

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- (a) In order to employ multi-year Performance Objectives, a multi-year fee amount has been established. The intent of the parties is that the entire amount of the fee will be allocated and made available to the Contractor to earn by April 30, 2006. **(Mod M103, 11/9/04; Mod M116, 4/22/05)**
- (b) Fee that is unearned by the Contractor as a result of Government cancellation or modification to a Performance Objective or impacted by events outside the control of the contractor will be allocated to an alternative Performance Objective or Objectives. Factors outside the control of the Contractor include the following:
- (1) Failure of the Government to meet listed assumptions or government-furnished property, information, or services as scheduled;
 - (2) Strikes as previously discussed and coordinated with DOE;
 - (3) Acts of God or public enemies;
 - (4) Unusually severe weather floods, or emergencies
 - (5) Delays by subcontractors that are unforeseen and beyond the control of the subcontractor as described in (3) and (4) above.
- (c) A minimum of two alternative Performance Objectives will be identified by the Contractor for allocation of fee within 10 working days of notification to DOE that the factors in this clause have impacted the Contractor's ability to earn fee. The original notification must be within 30 calendar days of the date of impact. Upon DOE agreement that contractor performance has been impacted, the Government shall assign the unearned fee within 21 working days of receipt of alternative work scopes from the Contractor.
- (d) If a Performance Objective is not completed as a result of any event listed above, the fee assigned to the Performance Objective will be considered earned commensurate with the percent complete for that Performance Objective. The Government and Contractor agree that the percent complete will not be solely based on the earned value, however earned value will be the initial basis for fee evaluation. Earned value will be derived from the most recent agreed to report of the Contractor's completion status as outlined in the ICP monthly Project Review and supporting documentation.
- (e) If the EM/RW base programming funding is changed plus or minus 5%, the Government and the contractor will conduct negotiations to appropriately adjust the total available fee pool.
- (f) If cost increases for power, medical benefits and/or pension plan contribution exceed what should be reasonably anticipated, 12% for medical benefits; \$11M for power costs for FY 2003 and FY2004, and \$3.67M for FY 2005; \$14M annual pension plan contribution for FY2003 and FY2004, and \$4.67M for FY2005, the government and contractor will enter into good faith negotiations to eliminate lower priority work scope requirements.
- (g) Fee allocated to PBIs which is unearned due to nonconformance with established PBI objectives shall be forfeited in its entirety and cannot be reallocated to other PBI objectives.
- (h) The Government's decision, if made unilaterally, with regard to fee pool adjustments is subject to the Disputes clause of the contract.
- (i) Effective October 1, 2001, through September 30, 2004, for purposes of clause I.66 (*DEAR 970.5215-3 Conditional Payment of Fee, Profit, or Incentives - Alternate 1 (DEC 2000)*) of this contract, the "evaluation period" shall be deemed to be 6 months in duration, and notwithstanding the terms of clause I.66, the maximum amount of fee reduction per

“evaluation period” shall be 1/4 of the total fee (after fee discount) for the 2-year period.

For purposes of clause I.66 (*DEAR 970.5215-3 Conditional Payment of Fee, Profit, or Incentives - Alternate 1 (DEC 2000)*, May 1, 2005, through April 30, 2006, shall be four stand-alone “evaluation periods”, and notwithstanding the terms of clause I.66, the maximum amount of fee reduction for the evaluation period shall be the total earned and paid fee during the specific period. **(Mod M103 11/9/04; Mod M116, 4/22/05)**

The contractor shall use its best efforts to achieve the work scope specifically covered by the Performance Based Incentive (PBI). Notwithstanding subsections (c) and (d) of Clause I.66 of this contract, the exclusive penalty for not completing the PBI shall be limited to the unearned fee associated with that individual incentive provided best efforts have been used. The Contracting Officer may apply subsections (a) and (b) of Clause I.66. **(Mod M073, 1/27/03) (Mod 081, 7/18/03) (Mod M096, 4/8/04; Mod M116, 4/22/05)**

H.36 RESERVED (DELETED by Modification M116, dated 4/22/05)

H.37 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 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. Proprietary data will be protected in accordance with the Rights in Data clause.
- (b) The Contractor agrees to and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries regardless of when conceived or actually reduced to practice or acquired by the Contractor, and any other intellectual property, which are owned or controlled by the Contractor, at any time through completion of this contract and which are incorporated or embodied in the construction of the facility or which are utilized in the operation of the facility or which cover articles, materials, or products manufactured at the facility, (1) to practice or to have practiced by or for the Government at the facility, and (2) to transfer such license with the transfer of that facility. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the 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, 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, 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 cost of the facility included in the proposal for settlement. **(Mod M116, 4/22/05)**

H.38 BBWI REPRESENTATIONS AND AGREEMENT RELATED TO FACILITY AND OPERATIONAL CONDITIONS

- (a) BBWI represents that it has exercised its best efforts to inspect the facilities and sites for which it is responsible under the AMWTP scope in accordance with clause I.57 Preexisting Conditions, given the constraints of time, resources, facilities, and operation conditions since February 15, 2005. As a result of these efforts, BBWI represents that, to the best of its ability, it has identified certain facility and operational conditions in the attached document entitled "AMWTP Facility and Operational Conditions (FOC) List" dated April 21, 2005, and that as of the date of execution of this agreement, it does not believe that any of these conditions will be subject to the provisions of clause I.57. This representation does not limit the rights of BBWI under the provision of clause I.57 except as explicitly stated in this clause H.38. The parties may, subject to mutual agreement, update the FOC items prior to May 1, 2005, which will be incorporated into the contract by modification.
- (b) BBWI further represents that it has exercised its best efforts to inspect the Government Furnished Property and Equipment (GFE), including the AMWTP facility, related waste processing equipment located at the AMWTP facility, specifications, operating manuals, required permits and licenses, AMWTP authorization basis documents, and all other equipment and documents necessary for BBWI to perform the AMWTP work described in the Statement of Work for the AMWTP contained in Section C, given the constraints of time, resources, facilities and operating conditions since February 15, 2005.
- (c) The parties agree that the FOC items incorporated into the contract under paragraph (a) above are not pre-existing conditions within the meaning of clause I.57. Accordingly, the provisions of Clause I.57 shall not entitle BBWI to an equitable adjustment in the amount of the available fee, the performance incentives, and/or the incentive schedule contained in clause B.4, PERFORMANCE BASED INCENTIVES FOR AMWTP WORK based on any such FOC items. If there should be a basis for DOE to increase the estimated cost under clause B.4 for reasons related to any Pre-Existing Conditions, Measure 4, entitled Milestone Achievement Incentive related to generating \$15,000,000 in savings shall continue to be based on savings from the \$125,000,000 estimated cost. BBWI shall separately account for any costs above the \$125,000,000, if the estimated cost should be increased based on approved requests for equitable adjustments or other changes in accordance with the Changes clause of the contract. **(Mod M116, 4/22/05)**