

SECTION IV

Fixed Price Construction Services Contract

This Fixed Price Construction Services Contract is made effective on _____, 2018, (“Effective Date”) by and between the Association of Universities for Research in Astronomy, Inc. (hereinafter “AURA), an Arizona non-profit corporation, located at 950 North Cherry Ave., Tucson, AZ 85719, and _____, hereinafter referred to as the "Contractor" located at: _____.

RECITALS:

A. Under Cooperative Agreement AST 0809409 between AURA and the United States of America represented by the National Science Foundation, Cooperative Support Agreement # 0950945, now in full force and effect, AURA, which operates the National Optical Astronomy Observatory (hereinafter “NOAO”), is engaged in the management, operation, and maintenance of observatories and related activities for research in the field of astronomy.

B. NOAO operates the Kitt Peak National Observatory (hereinafter “KPNO”), approximately 56 miles west of Tucson in the Schuk Toak District of the Tohono O’odham Nation;

C. AURA desires that Contractor make available its services, or those of its employees, as specified in this document, in support of revision of a clean power system in the Mayall 4Meter telescope in those areas in which it has special professional and/or technical qualifications; and

D. Contractor has the personnel and is willing and able to perform said work under the terms and conditions set forth in this Fixed Price Construction Services Contract hereinafter referred to as “Contract”;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1.0 SCOPE OF WORK

1.1. The Contractor shall provide all labor, materials, equipment, supplies, transportation and supervision necessary to complete the Scope of Work “4 Meter Telescope UPS Project” set forth in Attachment A, a copy of which is attached hereto and incorporated herein by reference as though fully set forth herein (hereinafter sometimes referred to as “the Work” or “the Project”). Contractor agrees to perform the Work in accordance with the terms of the Scope of Work/Technical Specifications set forth in Attachment A.

1.2. The Work shall be performed in accordance with: 1) the Articles of this Contract; 2) the AURA General Provisions set forth in Attachment B; 3) the Scope of Work/Technical Specifications set forth in Attachment A; 4) the Proposal from Contractor entitled: “Proposal” and dated _____, 2016, set forth in Attachment C. The Attachments immediately referred to above are attached to this Fixed Price Construction Services Contract (hereinafter “Contract”) and the provisions of such attachments are hereby incorporated by reference into this Contract as though each attachment is fully set forth herein.

ARTICLE 2.0 PERIOD OF PERFORMANCE

The Contractor shall commence the Work described in Article 1.0 above on the date Contractor receives a written “notice to proceed” from AURA, and said Work shall be completed by _____, 2016 inclusive. The foregoing time period (“period of performance”) may be extended beyond the completion date specified only by the mutual agreement of the parties, in writing.

ARTICLE 3.0 CONTRACT SUM

AURA shall pay the Contractor for performance of the work described in Article 1.0 above the total fixed price sum of _____(XXXXXX) (“Contract Sum”). A breakdown and allocation of the Contract Sum is set forth on the first page of Attachment C.

ARTICLE 4.0 SUBMISSION OF INVOICES AND PAYMENT

4.1. Contractor shall be paid monthly for Work performed, less deductions, if any, as provided herein. Invoices shall contain sufficient detail to enable AURA to clearly identify the costs for which payment is being requested.

4.2.1 For Work performed, AURA shall pay the invoice amount less ten percent (10%) of the invoiced amount which shall be withheld and deposited in a separate retention account to be paid to Contractor after “final system acceptance.” Upon completion of the project in accordance with the terms of the Scope of Work/Technical Specifications set forth in Attachment A, and final acceptance of the Work performed, Contractor shall submit an invoice for the amount held in retention. “Final acceptance” shall be contingent upon the correction, review and approval of all “deficient work” by AURA. “Deficient Work” shall be defined as work that does not meet the terms of the Scope of Work and Technical Specifications and for which AURA has identified as deficient work that needs to be corrected by Contractor.

4.2.2 In the event that Contractor fails to correct any or all Deficient Work, Contractor hereby consents to AURA withdrawing from the retention account and retaining a sum equivalent to the amount of money necessary to cover the cost of correcting the Deficient Work. In the event that the amount of money in the retention account is not enough money to pay for correcting the Deficient Work, AURA, will bill Contractor for the balance and Contractor shall be obligated to pay said balance. In the event that only a portion of the funds in the retention account are used to correct the Deficient Work, the unused balance in the retention account, shall be paid to Contractor in accordance with Article 4.6 below.

4.2.3 Upon Contractor’s determination that final acceptance has occurred, AURA will send to Contractor written confirmation that there is final system acceptance.

4.3 Only a complete invoice shall be processed for payment. A complete invoice shall contain: (1) reference to AURA Contract No.XXXXXXX; (2) the dollar amount due from AURA; and (3) sufficient detail to enable AURA to clearly identify the costs for which payment is being requested. Each invoice shall reflect the dollar amount due as a percentage of work completed

4.4 Each invoice presented for payment must bear the following certification:

"We acknowledge that the above statement is just and correct to the best of our knowledge and belief; that payment therefore has not been received; that it has been prepared from the books of account

and records of the Contractor and unencumbered title to the material and work completed represented herein rests in the Contractor."

By: Sample

Signature

Name: _____

Title: _____

Invoices should be mailed to:

AURA, Inc.
Procurement Office
P. O. Box 26732
Tucson, AZ 85726-6732

Or via email to: XXXXXXXXXXXXXXXX

4.5 Payment shall be made within thirty (30) days after AURA's receipt of Contractor's monthly statement for services, prepared in such form and detail as specified.

4.6. Upon AURA's determination of satisfactory completion of all of the Work and acceptance of the Work, the remaining amount due to Contractor, under this Contract, including all amounts retained in accordance with Article 4.2 above, but less any amounts set off against such remaining amount due as described in Article 4.2 above, shall be paid to Contractor upon receipt by AURA of a proper final invoice and a release of all liens, claims and encumbrances against AURA arising by virtue of this Contract, or a bond satisfactory to AURA indemnifying it against any such liens, claims or encumbrances. All such releases shall be in a form acceptable to AURA and may include releases from all subcontractors and suppliers that have or may have any rights related to any of the work.

ARTICLE 5.0 DAVIS-BACON ACT COMPLIANCE.

5.1. This Contract is subject to the Davis-Bacon Act, as amended (40 USC 276a-a7) and as supplemented by Department of Labor Regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). A copy of the applicable Wage Determinations for building construction in Pima County, Arizona is attached hereto as Attachment E. In performing the work described in Article 1.0, Contractor agrees to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the attached determinations, as applicable, or in any updated and amended version of the attached determinations made by the Secretary of Labor. Contractor shall pay wages to such laborers and mechanics not less than once per week.

5.2. On a weekly basis, Contractor shall submit to AURA's Procurement Office a copy of its weekly payrolls and those of its subcontractors for each week in which any work is performed. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under FAR 52.222-8 (Payrolls and Basic Records) of the General Provisions. Please visit the Davis-Bacon Act, as amended, website at: <http://www.gpo.gov/davisbacon> for further information. Contractor shall be responsible for the submission of copies of payrolls by its subcontractors.

ARTICLE 6.0 CONTRACTUAL AUTHORITY OF AURA

6.1. The AURA Contracts Officer(s) is/are the only person(s) authorized to approve changes in this Contract and perform post-award functions in administering and enforcing this Contract on behalf of AURA.

6.2. The Contracts Officer assigned to this project is Regina “Gina” Logan. Any questions relating to terms and conditions of this Contract should be brought to her attention at glogan@aura-astronomy.org, 520-318-8265.

6.3. The Technical Representative authorized to act on behalf of AURA for purposes of administering, and providing direction to Contractor related to the detailed technical aspects of the Work is designated in Article 11 below. In no event, however, shall AURA be bound by any understanding, agreement, modification, change order, or other matter deviating from the provisions of this Contract unless formalized by appropriate written contractual documents executed by the Contracts Officer. Technical direction by the Technical Representative is only valid if: (1) it is issued in writing and is consistent with the description of the work contained in the Scope of Work/Technical Specifications; (2) it does not constitute a new assignment of work nor change the express terms, conditions or specifications of this Contract; and (3) it does not constitute a basis for any increase in the contract price or extension of time for completion of the Work.

6.4. The person executing this Contract on behalf of AURA hereby warrants and represents that he or she has authority to enter into this Contract on behalf of AURA.

ARTICLE 7.0 CONTRACTUAL AUTHORITY OF CONTRACTOR

7.1. Promptly upon execution of this Contract by Contractor, Contractor shall appoint a Project Manager acceptable to AURA, who shall be: (1) the primary contact for Contractor in all matters related to this Contract; (2) responsible for the administration, coordination, and supervision of the Contract and Work by Contractor; and (3) authorized to act on behalf of, sign for, and accept responsibilities on behalf of Contractor consistent with the Contractor’s organizational structure. Contractor shall notify AURA of such appointment in writing, and shall not replace the Project Manager without the prior written consent of AURA.

7.2. The person executing this Contract on behalf of Contractor hereby warrants and represents that he or she has authority to enter into this Contract on behalf of Contractor.

ARTICLE 8.0 PRESENCE ON AURA PREMISES

8.1. The Contractor agrees that all persons working for or on behalf of the Contractor whose duties bring them upon AURA’s premises shall obey the rules and regulations that are established by AURA, and shall comply with the reasonable directions of AURA’s officers.

8.2. The Contractor shall be responsible for the acts of its employees, subcontractor(s) or agents while on AURA’s premises. Accordingly, the Contractor agrees to take all necessary and reasonable measures to prevent injury and loss to persons or property located on AURA’s premises. The Contractor shall be responsible for all damages to persons or property caused by the Contractor, its subcontractors or any of its agents, assigns or employees. The Contractor shall promptly repair, to the specifications of AURA, any damage that it, its subcontractor(s) or its employees, agents or assigns may cause to AURA’s premises or equipment. If the Contractor fails to repair such damage, AURA may repair or have repaired the damage

and the Contractor shall reimburse AURA for the cost of the repair. Alternatively, AURA may deduct the cost of the repair from any amounts owed to Contractor under this Contract and seek reimbursement for any unpaid amount of the cost of repair from Contractor.

8.3. Contractor must comply with Safety Regulations as promulgated by the Occupational Safety and Health Act of 1970 as amended.

8.4. The Contractor agrees that, in the event of an accident of any kind, Contractor will immediately notify the Site Representative and the Technical Representative designated herein as well as Chuck Gessner, Risk Manager, at 318-8211 and thereafter furnish a complete written report of such accident.

8.5. The Contractor shall perform the services described in this Contract without interfering in any way with the activities of AURA.

ARTICLE 9.0 GENERAL CONDITIONS FOR WORK ON KITT PEAK

9.1. Site Information

The Kitt Peak National Observatory site (“KPNO”) is operated by the National Optical Astronomy Observatory (NOAO) under the auspices of the Association of Universities for Research in Astronomy, Inc. (AURA).

The work site, as described in the Request for Bid, is located on Kitt Peak.

9.2. Regulations

Contractor, its subcontractors and visitors shall abide by KPNO regulations as set forth in this section. It is the responsibility of the Contractor to make known and to enforce these regulations for all personnel working on their behalf.

(i) KPNO Operations

The Kitt Peak staff operates this facility on a 24-hour per day schedule. Pedestrian and vehicular traffic is to be expected at all hours of the day and night. Contractor’s employees and vehicles will share the same roads with observatory and maintenance traffic. Contractor shall be responsible for the safe operation of its vehicles. Traffic is limited to 10 mph in the main complex.

Contractor shall not by its actions limit access to Kitt Peak facilities nor otherwise interfere with Kitt Peak operations without prior approval by the Site Representative.

(ii) Access to the Site

Contractor's employees and subcontractors' employees are permitted to cross KPNO grounds to gain access to the work site. They may not otherwise wander off the work site, or enter NOAO/NSO buildings without approval of AURA’s Site Representative (defined in b. 5 below).

(iii) Noise

The amount of noise generated during the work is of special concern to KPNO. The majority of visiting KPNO scientists will be sleeping during the day. Activities, which generate excessive noise levels, should where possible, be scheduled to be performed in

late afternoons. It is not the intention of KPNO to unreasonably impact normal work procedures, but KPNO expects the Vendor to make a reasonable effort to provide noise abatement and respect the needs of the day sleepers.

(iv) Alcoholic Beverages

Alcoholic beverages are not permitted within the confines of Kitt Peak National Observatory.

(v) Site Representative

The Site Representative, Larry Reddell, AURA's KPNO Facility Supervisor, 520-318-8734 or email lreddell@noao.edu or his designee (hereinafter "Site Representative"), will be stationed on Kitt Peak during performance of the Work by the Contractor, and shall act as the primary liaison between the Contractor and KPNO staff. The Site Representative shall periodically monitor the work at the site and shall report any work issues directly to AURA's Technical Representative, Ralph Smith via telephone at 520-318-8284 or via email at rsmith@noao.edu. The Technical Representative shall also act as the liaison between the Contractor, KPNO staff and state and federal agencies, as necessary. Any technical concerns regarding the Project should be directed to the Technical representative for resolution.

Contractor shall provide to the Site and Technical Representatives access to the Work in preparation and progress, wherever located. The Site and Technical Representatives shall have access to documents, samples, equipment and materials (as applicable) maintained by Contractor at the site as specified. Upon reasonable notice, Contractor shall provide the Site Representative and Technical Representatives access for inspection to material and equipment delivered and stored for subsequent incorporation in the Work wherever located.

9.3. Tohono O'odham Nation Regulations

9.3.1 The Observatory is located within the boundaries of the Tohono O'odham Nation. To the extent applicable, all Bidders shall comply with Ordinance No. 01-85, "TERO Ordinance" and the implementing regulations issued by the Tohono O'odham Employment Rights Commission, as well as any other applicable tribal laws or regulations. A copy of the Ordinance No. 01-85 may be found on our website <http://auracas.aura-astronomy.org/?q=bids> or at <http://www.tonation-nsn.gov/department-public-safety/tero/>.

9.3.2 All entities, contractors or subcontractors that intend to engage in business activity on the Tohono O'odham Nation must submit for approval to the Tribal Employment Rights Office a contracting, subcontracting, employment and training plan prior to the commencement of work on the Tohono O'odham Nation. A copy of the TERO Compliance Agreement Plan is posted on our website <http://auracas.aura-astronomy.org/?q=bids> and also can be obtained by clicking on "Compliance" at the following Website www.tonation-nsn.gov/department-public-safety/tero/. Under Ordinance No. 01-85 and its implementing regulations, no new employer may commence work on the Tohono O'odham Nation until it has met with TERO and developed an acceptable plan for meeting its obligations under Ordinance 01-85. The primary contractor/employer is responsible for the TERO compliance of its subcontractors or suppliers.

9.3.3 The successful bidder is required to contact the Tribal Employment Rights Office ("TERO") of the Tohono O'odham Nation, at the number indicated below, to obtain a copy of the Ordinance.

Director
Tribal Employment Rights Office
Tohono O'odham Nation
P. O. Box 40
Sells, AZ 85634
(520) 383-3304 or (520) 547-8160
FAX (520) 383-2781
www.tonation-nsn.gov/department-public-safety/tero/

9.3.4. The Tohono O'odham Nation charges an employment rights fee to raise money for the Tohono O'odham Employment Rights Commission. The current Employment Rights Fee required to be paid by a "covered employer" is a one time fee of ½ of 1% of the total value of any construction contract to be performed on the Reservation having a value of \$100,000 or more, see Section 1110(A) of the TERO Ordinance. The payment of this fee is administered by the TERO office. See www.tonation-nsn.gov/department-public-safety/tero/, click Contractor Information.

9.3.5 The successful Bidder may also be subject to Ordinance No. 03-81, "Transaction Privilege Taxes." See <http://www.tonation-nsn.gov/tax-information/>

9.4. Safety

The adjoining facilities, parking areas and roadways will be in use during the performance of the Work. If applicable, Contractor shall provide temporary barriers, as required to separate all construction activities from visitor and staff traffic. Contractor shall comply with all applicable OSHA regulations and shall implement all necessary measures to insure the safety of Contractor's employees, NOAO employees, and visitors.

9.5. Protection and Security

Contractor shall be responsible for the proper protection of its materials and equipment until the completion of the Project. This includes, but is not limited to, any necessary protection from inclement weather. Contractor shall take all required measures to secure the existing buildings and structures affected by the Work.

9.6. Facilities

A designated area in the vicinity will be provided to Contractor for staging and storage of materials. Contractor shall be permitted to use the toilet facilities located in the KPNO maintenance yard. KPNO will provide Contractor with 110/220 VAC electrical power, at no cost to Contractor; however, power for heavy load equipment must be furnished by Contractor by portable generator.

9.7. Existing Utilities

Shut-off of existing utilities is to be done with switches serving only the affected building or area where the Work is being performed. Any required shut-off of existing utilities shall be coordinated with the Site Representative.

All existing utility lines in the vicinity not affected by the Work are to be protected. Any damages to the existing utility lines are to be repaired, by the Contractor, to the satisfaction of the Site Representative.

9.8. Schedule and Proprietary Use

Contractor shall review the work schedule for the Project with the Site Representative and AURA's Technical Representative, _____ or his/her designee (hereinafter "Technical Representative") before commencing the Work. AURA reserves the right to perform the Work, or to allow the Work to be performed by other contractors.

Typical KPNO Work Schedule:

Work day: Contractor will be allowed access to the work site during daylight hours. Daylight hours are defined as 1/2 hour after sunrise to 1/2 hour before sunset. Work hours are generally from 8:00 a.m. to 4:00 p.m., Monday through Friday. Other arrangements may be established with the Site Representative in advance by mutual agreement

Work week: The work week will be 5 days a week, Monday through Friday, excluding national holidays. Other arrangements may be established with the Site Representative in advance by mutual agreement

After-hours, holiday or weekend work may be allowed at the discretion of the Site Representative. The Site Representative will coordinate this schedule.

9.9. Permits and Inspection

KPNO is a federally owned facility. No state or local permits or inspections are required for performance of work at the KPNO. Periodic inspections will be performed by the Technical Representative. All work shall comply with local codes.

9.10 Clean Up and Environmental Protection

During the course of the project, Contractor shall keep the construction area free from accumulations of waste and rubbish. Work areas are to be kept clean as suited to the requirements of items being installed. Upon completion of the Project, all finished surfaces and areas shall be left clean and fit for AURA's use. Existing conditions, where affected by construction, shall be restored to original condition to the satisfaction of AURA. Rubbish removal from the site will be the responsibility of Contractor.

The Contractor is responsible to ensure that toxic substances used in the work are not released in a harmful way to the environment. It is of particular concern to AURA that the water collection system should not be contaminated with toxic material.

Spills of toxic substances including, but not limited to, lubricating fluids, fuel, solvents and paint shall be contained immediately and reported to the Site Representative and to the Risk Management Specialist. Contractor shall be responsible for cleaning up spills that result from performance of the Work, and shall bear all costs associated with the clean up.

ARTICLE 10.0 USE OF AURA'S FACILITIES

The Contractor, its employees, subcontractors, agents and assigns shall have the right to use only those facilities of AURA that are necessary to perform services under this Contract and shall have no right of access to any other facilities of AURA.

ARTICLE 11.0 TECHNICAL REPRESENTATIVE(S)

The Technical Representative on this project is XXXXXX. If any questions arise during the performance of this Work, they should be brought to the attention of XXXXXX at 520-318-8284 or via email to XXXXXX@noao.edu.

ARTICLE 12.0 SPECIAL CONDITIONS

The following conditions shall apply and the failure to adhere to these conditions may constitute a default on the part of the Contractor, resulting in a reduction in the total Contract cost, or the termination of this Contract, or both:

12.1 Changes to scope of work, performance schedule, or any other change which materially affect(s) the Contract, or changes which would alter the Contract price are not valid unless signed in writing by AURA's Contracts Officer. No payment for extras, overruns or other changes shall be made unless AURA's Contracts Officer authorizes such extras in writing.

12.2. The following must be submitted **prior to** the commencement of work:

- Appropriate Contractor's license number(s) applicable to the work to be performed.
- Liability and workers' compensation insurance, or statement thereof.
- Performance and Payment Bonds if applicable to this Contract.
- Schedule of work (Timeline and milestones).

12.3 Contractor must comply with Safety Regulations as promulgated by the Occupational Safety and Health Act of 1970, as amended.

12.4. Contractor's Project Manager shall give AURA's Technical Representative a minimum of five (5) days advance notice prior to commencing work.

13.0 INDEMNITY AND INSURANCE

13.1. Contractor shall at all times keep AURA free and clear from all claims, liens, and encumbrances asserted by any person or other entity for any reason whatsoever arising from the furnishing of services under this Contract. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless AURA, its directors, officers, employees, agents, representatives and affiliates (hereinafter collectively referred to as "Indemnified Parties") for, from and against any and all claims, demands, actions or causes of action, costs, damages, liabilities, injuries, expenses, or losses of any nature whatsoever to which any of the Indemnified Parties may become subject under any theory of liability whatsoever ("Claims") insofar as such Claims (or actions in respect hereof) arise from, are connected with or are related to: (i) any inaccuracy in or breach of any of Contractor's representations and warranties set forth in this Contract; and (ii) any intentional misconduct, negligent acts, errors, mistakes or omissions of Contract, its officers, employees, agents or any tier of subcontractor in performing the obligations and the work covered by this Contract. To the fullest extent permitted by law, AURA shall be responsible for its own negligent acts, omissions and mistakes, and that of its employees and subcontractors. Although Contractor shall defend AURA, in the event of a final determination of joint

negligence or other breach of duty between Contractor and AURA, Contractor's total indemnity liability to AURA shall be the percentage determined to be Contractor's share of liability. Every obligation of this indemnification paragraph shall survive the completion of the Work hereunder and the termination of this Contract.

13.2. Contractor shall at its own expense, during the course of this Contract, maintain in force at all times insurance to cover its obligations under this Article 14 and such policy shall contain an endorsement to eliminate any exclusions which might operate to prohibit the policy's coverage of the types of claims covered this Article 14 and such endorsement shall specially cover the terms of this Article. Contractor shall name AURA as additional insured under such contract of insurance.

In addition, Contractor shall, at its sole cost and expense, maintain in force at all times during the period of performance the types of insurance designated below with the limits of liability specified. The insurance carrier must be approved by AURA, and have an A.M. Best rating of A- or better.

- Workers' Compensation: Statutory limits
- Comprehensive General Liability: \$1,000,000 each occurrence/\$3,000,000 annual aggregate (including contractual liability)
- Products/Completed Operations \$1,000,000 each occurrence

If any portions of the services to be furnished under this Contract are to be performed on AURA's premises, Contractor will also provide the following coverage:

- Automobile Liability: Bodily Injury \$1,000,000 each occurrence
 Property Damage \$1,000,000 each occurrence

Should Contractor take possession of property belonging to AURA that at any time will be in transit, or at a location other than AURA, additional proof of insurance for "personal property of others in the care, custody and control" shall be provided to AURA. The limit of such coverage will be valued at replacement cost of such property as determined by AURA.

The amount and type of insurance coverage requirements set forth in this Contract or remuneration if any insurance coverage herein provided shall in no way be construed as limiting the scope of the indemnity in this Article or be construed to limit Contractor's obligations or liability under this Contract. Such indemnity shall be required by Contractor from its subcontractors on behalf of AURA.

12.3. A Certificate of Insurance evidencing each of the above coverages and requirements shall be delivered to AURA within fifteen (15) days following the date that Contractor receives a fully executed original of this Contract, or prior to commencement of the Work, whichever occurs first. The certificate(s) shall name AURA, its officers, agents, and employees as additional insureds, and shall provide a forty-five (45) day notice of cancellation. Requests to modify coverage will be delivered to AURA forty-five (45) days prior to the effective date of change and such modification will require approval by AURA. Certificates shall not be canceled, materially changed, or allowed to expire until forty five (45) days' prior written notice has been given to AURA

12.4. Accordingly, AURA agrees that they shall promptly notify Contractor in writing of any claim or action brought against AURA for which Contractor may be responsible under Article 14.0 Upon its receipt of notification of (a) Claim(s) from AURA, Contractor shall promptly take over and defend any

such Claim(s) by tendering the Claim(s) to its insurance company for handling. Such insurance coverage shall be primary and shall be used for purposes of satisfying Contractor's obligations hereunder. In the event said Claim(s) is/are not covered by insurance or such insurance is exhausted, Contractor shall directly fulfill its obligations to indemnify, defend and hold harmless under this Article 14.0 and take over and defend any such Claim(s). If Contractor fails to assume or maintain control of the defense of any Claim(s) (either through its insurance company or directly), AURA shall have the right to control such defense. In addition, AURA shall have the right and option to represent itself in defense of any such Claim(s) at any time if AURA, in its sole discretion, determines that its rights are not being appropriately defended by Contractor. If AURA controls such defense, Contractor agrees to pay to that party, promptly upon demand, from time to time, all reasonable attorneys' fees and other costs and expenses of defense. If Contractor assumes control of such defense and AURA reasonably concludes that Contractor and AURA have conflicting interests or different defenses available with respect to such proceeding, then the reasonable fees and expenses of counsel and the associated costs of such proceeding to AURA shall be considered and included as "expenses" for purposes of this Contract.

12.5. None of the party's hereto shall agree to any settlement of, or the entry of any judgment arising from, any third party claim involving the other without the prior written consent of the other, which shall not be unreasonably withheld, delayed or conditioned.

ARTICLE 14.0 PROCUREMENT OF BONDS

In accordance with the terms of the Request For Bid (RFB) for the award of this contract, if Contractor's bid is \$100,000.00 or more, Contractor has obtained and provided to AURA: (i) a bid guarantee in the amount of five percent of the Contract Sum; (ii) a performance bond in the full amount of the "Contract Sum" in Article 3.0, guaranteeing the performance of the terms of this Fixed Price Construction Services Contract for the stipulated price within the time specified for completion (Performance Bond); and (iii) a payment bond in the full amount of the Contract Sum in Article 3.0 guaranteeing payment as required by statute of all persons supplying labor and materials in the execution of the Work provided for herein (Payment Bond). AURA shall be entitled to rely on such guarantee and bonds.

ARTICLE 15.0 QUALITY OF SERVICES

Contractor agrees to perform the services described in Article 1.0 above in accordance with the standards of care, skill, and diligence normally provided by an organization performing similar services.

ARTICLE 16.0 WARRANTY

16.1. Contractor shall warranty all equipment and materials as well as its workmanship for a period of one year from the date of "final system acceptance" as that term is defined in Article 4.0 Further, Contractor warrants that its performance of the Work will be carried out with that standard of care, skill, and diligence normally provided by a professional organization in the performance of similar services. Contractor warrants that the performance of subcontractors at any tier, or any other person assigned by it under this Contract, shall be in accordance with sound practice and professional standards of its trade and the requirements of this Contract. If the equipment and materials and/or the workmanship performed fails to comply with this warranty, and Contractor is so notified in writing within one (1) calendar year after system acceptance as defined in Article 4.0 of this Contract, Contractor will repair or replace such equipment and/or materials and/or correct any deficient workmanship at its own expense or, at AURA's option, will refund the amount of the compensation paid for such portion of the Work.

16.2. All equipment and materials installed shall have the warranty of their manufacturer and such warranty

shall be passed through by Contractor to AURA. The implied warranty of merchantability and the implied warranty of fitness for a particular purpose shall be applicable to all goods sold by Contractor to AURA under this Contract and shall not be disclaimed by Contractor.

ARTICLE 17.0 CHANGES

17.1 AURA may at any time, by issuance of a written Change Order to this Contract by the AURA Contracting Office, make changes within the general scope of this Contract in any one or more of the following: (i) tasks or subtasks under Article 1, where such change will expedite performance or enhance the level of services to be provided; (ii) time or place of delivery and (iii) period of performance. If any such change causes an increase or decrease in the cost of, or time required for, the performance of this Contract, Contractor shall notify the AURA Contracts Office in writing and request that an equitable adjustment be made in the price under this Contract or delivery schedule, or both, and this Contract shall be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted within fifteen (15) days from the date of receipt by Contractor of the notification of change; otherwise, Contractor shall be deemed to have waived such claim. In no event shall Contractor be responsible or obligated for any increase in the price under this Contract or revision in the delivery schedule, unless the change in the Contract giving rise to any price increase or revised delivery schedule was in the first instance specifically ordered in writing by the AURA Contracts Office. However, nothing in this clause shall excuse Contractor from proceeding with performance under the Contract as changed.

17.2. Contractor shall comply promptly with any requests by AURA relating to the emphasis or relative emphasis to be placed on various aspects of the Work, or to such other matters pertaining to said Work as are indicated of concern to AURA.

17.3. Except as otherwise provided in this Contract, no payment for extras shall be made unless such extras have been authorized in writing by the AURA Contracts Office.

17.4. Nothing in this Contract, including the scope or qualities of the services or goods provided, may be modified except by means of a written amendment or change order signed by a Contracts Officer and accepted by the Contractor. Verbal agreements to modify or add work are unenforceable.

ARTICLE 18.0 TIME IS OF THE ESSENCE

Time is of the essence with respect to all provisions of this Contract that specify a time period for performance. Contractor must notify the Contracts Officer assigned to this Contract within five (5) days after determining a contract date cannot be met.

ARTICLE 19.0 DELAYS

Contractor shall notify AURA within five (5) days of any material delay in performance of specified services and shall specify in writing to AURA the proposed revised date of performance or delivery date as soon as practicable after notice of delay. Such notification shall not be construed as repudiation by the Contractor of its obligations under this Contract. Contractor shall not be liable for delays in performance or delivery due to causes beyond its reasonable control, and not otherwise due to its fault or negligence. In the event of such delay, the date of performance or of delivery shall be extended for a period equal to the time lost by reason of said delay on written approval of AURA. Contractor shall maintain a log of time lost and the reasons therefore for the periodic review of the Site or Technical Representative. This Contract shall be amended in writing to reflect a change in the period of performance due to delay.

ARTICLE 20.0 SUSPENSION OF THE WORK

Performance of the Work under this Contract may be suspended by AURA in the event funding for this Project is delayed. Such suspension shall be considered temporary and in no way shall be deemed to be a breach or termination of this Contract.

ARTICLE 21.0 TERMINATION

21.1 Termination for Convenience. Either party shall have the right to terminate performance under this Agreement at any time for its convenience. If termination is for the convenience, the party that wishes to terminate the agreement shall notify the other party at least thirty (30) days in advance of the effective date of termination specified in such notice. On said termination, Sub recipient shall be paid for all services satisfactorily rendered in accordance with Scope of Work.

21.2 Termination for Default/Cause. Either party shall have the right to terminate performance under this Agreement at any time for the other party's default by notifying such party in writing. If termination is for default, the defaulting party shall have thirty (30) days, or such longer period as the non-defaulting party may authorize in writing, after the receipt of written notice of the nature of the default to correct the same, before such termination is given by the non-defaulting party.

ARTICLE 22.0 FORCE MAJEURE

Neither Contractor nor AURA shall be liable for failure to fulfill its obligations herein or for delays in performance or delivery, as applicable, due to causes beyond its reasonable control, including, but not limited to: acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government shut downs (total or partial), the termination, lapse or delay in government funding, changes in governmental priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism (hereinafter collectively or singularly referred to as force majeure event). Where there is an event of force majeure, the party prevented from or delayed in performing its obligations under this contract must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the contract. Upon completion of the event of force majeure, the party affected must as soon as reasonably practicable recommence performance of its obligations under this contract. An event of force majeure does not relieve a party from liability for an obligation that arose before the occurrence of that event. In the event the force majeure event exists for a year or more, either party hereto may seek to terminate this Agreement without further liability.

ARTICLE 23.0 INDEPENDENT CONTRACTOR

The Contractor, at all times, shall be deemed an independent contractor and shall not act as nor be an agent or employee of AURA. The Contractor, as an independent contractor, will be solely responsible for determining the means and methods for performing the construction/professional and/or technical services described in Article 1.0, and shall have complete charge and responsibility for persons

employed by Contractor and engaged in the performance of the specified Work. All of the Contractor's activities will be at its own risk and Contractor is hereby given notice of this responsibility for making arrangements to guard against physical, financial, and other risks as appropriate. Contractor shall observe and abide by all applicable laws and regulations, including, but not limited to, those of AURA relative to conduct on its premises.

ARTICLE 24.0 SMALL AND SMALL DISADVANTAGED SUBCONTRACTING

It is AURA Policy that small business concerns and small socially and economically disadvantaged business concerns be given the maximum practicable opportunity to compete for Subcontracts in order to assure maximum small business participation consistent with fulfilling AURA's contractual obligations in an efficient and economical manner.

ARTICLE 25.0 NON-EXCLUSIVE CONTRACT

The services to be provided under this Contract are not limited to this Contract. AURA reserves the right to perform the same or similar services or to contract with others for the same or similar services. Nothing in this Contract shall be construed as granting Contractor exclusive rights to perform the services.

ARTICLE 26.0 ASSIGNMENT

This Contract shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto, but may not be voluntarily assigned in whole or in part by either party without the prior written consent of the other party. Provided, however, that AURA may assign this Contract to the United States of America without the permission of the Contractor. Provided, further, that unless this Contract is assigned to the Government, it does not bind or purport to bind the National Science Foundation or the United States of America.

ARTICLE 27.0 COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS

Each party expressly agrees to abide by any and all applicable federal, state and local laws, regulations and ordinances governing their obligations under this Contract, including without limitation, and to the extent applicable, state and federal rules governing non-discrimination, immigration, Title 7 of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination and Employment Act of 1967, the Equal Pay Act of 1963, the National Labor Relations Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973 and the Occupational Safety and Health Act of 1970, and Executive Order #11246, as may be from time to time modified or amended.

In addition, the Federal government requires that AURA impose on its contractors and subcontractors the requirement that such contractors or subcontractors comply with certain federal laws and regulations as a condition of AURA's receipt of federal funds. Therefore, this Contract incorporates by reference herein the following statutes and regulations with the same force and effect as if they were fully set forth herein. In performing its obligations under this Contract, Contractor agrees to comply with the statutes and regulations set forth below and shall require and cause its subcontractors to comply with such statutes and regulations. Upon request, the Contracts Officer assigned to this Contract will make the full text of any statute or regulation set forth herein available to Contractor.

27.1. Contractor and its subcontractors shall comply with E.O. 11246 "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR 1964-1965 Comp., p. 339), as amended by E. O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations

at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

b. If this Contract is a construction contract involving payments to Contractor in excess of \$2,000.00, Contractor and its subcontractors shall comply with the Copeland Anti-Kickback Act (18 USC 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. AURA shall report all suspected or reported violations to the Federal awarding agency.

27.3. If this Contract involves (a) payment(s) to Contractor in excess of \$2,000.00, Contractor and its subcontractors shall comply with the Davis-Bacon Act (40 USC 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR, part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction."). Contractor and its subcontractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. Contractor shall be required to pay wages not less than once a week.

27.4. If this Contract involves (a) payment(s) to Contractor in excess of \$2,000.00, Contractor and its subcontractors shall comply with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-333) as supplemented by the Department of Labor regulations (29 CFR part 5). Under section 102 of the foregoing Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 and 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and requires that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

27.5. If this Contract involves (a) payment(s) to Contractor in excess of \$100,000.00, Contractor and its subcontractors shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 et seq.) and the Federal Water Pollution Control Act (33 USC 1251 et seq.) as amended.

27.6. If this Contract involves (a) payment(s) to Contractor equal to or in excess of \$100,000.00, Contractor shall provide and shall require its subcontractors to provide and file certifications that comply with the Byrd Anti-Lobbying Amendment (31 USC 1352).

27.7. If this Contract involves (a) payment(s) to Contractor equal to or in excess of \$25,000.00, Contractor shall provide AURA with confirmation that it is not listed on the government-wide Excluded Parties List System in accordance with the OMB guidelines at 2 CFR Part 180 that implement E.O.s 12549 (3 CFR, 1986 Comp. p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension."

27.8. To the extent that this Contract requires the performance of experimental, developmental or research work, Contractor agrees that the Federal government and AURA shall have rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Non-profit Organizations and small business firms under government Grants, Contracts and Cooperative Contracts," and any implementing

regulations issued by the Federal agency from which AURA received financial assistance to carry out the work contemplated by this Contract.

27.9. Contractor agrees that AURA, its Awarding agency, the Comptroller General of the United States or any of their duly authorized representatives shall have access to any books, documents, papers and records of the Contractor that are directly pertinent to Contractor's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts and transcriptions. Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after the final payment is made and all pending matters are closed.

27.10. Contractor agrees that all subcontracts it awards to others to assist it in fulfilling its obligations under this Contract shall contain all of the applicable provisions set forth in this Article 27 and shall require all such subcontractors to comply with all such provisions.

ARTICLE 28.0 AUDIT AND AVAILABILITY OF RECORDS

AURA is responsible for ensuring that Contractor is in compliance with applicable laws and regulations and other award conditions. Financial reports, supporting documents, and other records pertinent to this Contract, shall be retained by Contractor for a period of three (3) years from the date of final payment except that records related to audits, appeals, litigation or the settlement of claims arising out of performance of this Contract shall be retained until such audits, appeals, litigation or claims have been resolved. Notwithstanding any other conditions of this Contract, the records and financial statements of Contractor shall be made available upon request, at the Contractor's regular place of business, for examination by AURA or their duly authorized representative(s).

ARTICLE 29.0 ARBITRATION

Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All matters within the scope of the Federal Arbitration Act of the United States (9 U.S.C. §§1 et seq.) shall be governed by it. The place of arbitration shall be Tucson, Arizona. The arbitrator shall have the right to award or include in its award any relief which it deems proper in the circumstances, including without limitation, money damages (with interest on unpaid amounts from date due), specific performance, and injunctive relief provided that the arbitrators shall not have the authority to award exemplary, punitive or special damages. The award and decision of the arbitrator shall be conclusive and binding upon all parties hereto and judgment upon the award may be entered in any court of competent jurisdiction. Notwithstanding anything to the contrary contained herein, each party hereto shall have the right in a proper case to obtain temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction, provided, however, that the parties agree to contemporaneously submit their dispute for arbitration on the merits as provided herein.

Both parties shall share the cost of the dispute resolution process equally although personal attorneys and witnesses or specialists are the direct responsibility of each party and their fees and expenses shall be the responsibility of the individual parties.

ARTICLE 30.0 SURVIVAL

The terms, conditions, representations, indemnifications and warranties contained in this Agreement shall survive the termination of this Agreement and acceptance of the Work.

ARTICLE 31.0 ORDER OF PRECEDANCE

In the event of conflict among the provisions of any of the documents described in Article 1.0, interpretation of this Contract shall be governed in the following descending order of priority: 1) the Articles of this Contract; 2) the AURA Construction Services Contract Terms and Conditions set forth in Attachment B; 3) the Statement of Work/Technical Specifications set forth in Attachment A; and 4) the Proposal from Contractor dated _____, set forth in Attachment C.

ARTICLE 32.0 SEVERABILITY

The invalidity in whole or in part of any provision of this Contract shall not affect the validity of other provisions. AURA’s failure to enforce a right hereunder promptly shall not be deemed a waiver of such right, and no waiver of right under a provision shall constitute a waiver of any other right under such provision or any other provision.

ARTICLE 33.0 AUTHORITY

The persons executing this Contract represent and warrant that they have the full power and authority to enter into this Contract on behalf of the entities they are signing on behalf of.

ARTICLE 34.0 INTEGRATION

This Contract, together with any addenda and amendments relating hereto, sets forth the entire understanding between the parties and supersedes all prior or contemporaneous Contracts, representations and understandings between the parties with respect to the subject matter of this Contract. This Contract may only be amended in a writing signed by both parties hereto.

ARTICLE 35.0 APPLICABLE LAW

35.1. This Contract shall be governed, interpreted and construed in accordance with the laws of the State of Arizona without regard to its conflict of law rules.

35.2. The work performed by the Contractor must comply with the laws of the Tohono O’odham Nation as well as with Arizona state law, Pima County ordinances, federal law and any other laws and/or ordinances which may be applicable to the work to be performed.

ARTICLE 36.0 NOTICES

Where notice is required or permitted under this Contract, it shall be sent by first class mail, return receipt requested or personally delivered to the Parties at their respective addresses below:

For AURA: Gina Logan
Senior Contracts Officer
AURA Inc.
950 North Cherry Avenue
Tucson, AZ 85719
Phone: 520-318-8265
Fax: 520-318-8456
Email: glogan@aura-astronomy.org

For CONTRACTOR:

XXXXXX
XXXXXX
XXXXXX
XXXXXX

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the dates set forth below to be effective on the date first set forth above.

**ASSOCIATION OF UNIVERSITIES FOR
RESEARCH IN ASTRONOMY**

Dated: _____

CONTRACTOR

Dated: _____