

**Construction Services
Contract**

This contract (the “Contract”) is entered into between the **Association of Universities for Research in Astronomy, Inc.**, an Arizona non-profit corporation (hereinafter “AURA”), and **[Name of Contractor]**, having its principle place of business in **[insert City, State]** (hereinafter “Contractor”).

RECITALS

WHEREAS, AURA performs scientific research and operates and maintains federally supported research facilities for the National Science Foundation (“NSF”) and other federal agencies;

WHEREAS, AURA requires certain construction services in furtherance of such activities;

WHEREAS, Contractor is willing and able to perform the construction services under the terms, conditions, and standards set forth in this Contract, including, but not limited to, all applicable federal and local laws and regulations.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby, the Parties agree as follows:

**Article 1
Purpose**

The purpose of this Contract is for AURA to acquire from Contractor **[insert brief project description and purpose of the contract]**, as more fully described herein.

**Article 2
Construction Services**

1. **Construction Services Required.** Contractor shall provide all labor, materials, equipment, supplies, machinery, transportation, supervision and services necessary to execute and complete all work required by this Contract in accordance with the requirements and standards set forth in this Contract (collectively herein the “Work”). Except as otherwise specified in this Contract, Contractor shall be solely responsible for, and shall have control over (i) the means, methods, techniques, sequences, and procedures used in the execution and completion of the Work and (ii) coordination of all portions of the Work.
2. **Technical Specifications.** The technical specifications for the Work are set forth more fully in the “Statement of Work” attached as **Appendix 1**, which is hereby incorporated into the Contract.
3. **Alternatives.** Alternatives, either in the form of alternative or particular approaches to the Work or special contract terms, offered by Contractor in its proposal that were accepted by AURA (if any) are listed in **Appendix 1A**, which is hereby incorporated into the Contract.

4. Compliance with Federal and Local Laws and Requirements. Contractor shall perform the Work in a manner consistent with all applicable federal laws and requirements set forth in **Appendix 2** and all applicable local laws and requirements set forth in **Appendix 3**, each of which is hereby incorporated into the Contract. Contractor is expected to have reasonable knowledge of local laws and requirements and to have examined the same in preparation of its proposal. Failure to list any particular local requirement in **Appendix 3** shall not relieve Contractor of compliance therewith at Contractor's expense.

5. Key Personnel. Key personnel listed in **Appendix 1** (if any) shall not be removed or replaced without prior approval of AURA. Any proposed substitute key person shall have materially equivalent qualifications and skills to the person for whom substitution is requested. In the event Contractor is able to demonstrate that a proposed substitute meets such standards, AURA shall not unreasonably deny substitution.

6. Work Breakdown Structure. If a work breakdown structure ("WBS") is required by **Appendix 1**, the WBS prepared by Contractor shall show the expected starting and completion dates for all major components of the Work (which dates shall be consistent with those set forth below in the agreed performance schedule), as well as all related subtasks. Unless otherwise approved by AURA, the WBS shall be in the form of GANTT and PERT charts containing critical milestones for the work. If schedule changes are approved by AURA, Contractor shall update and resubmit the WBS to ensure it remains accurate.

7. Examination of Contract Documents and Notice Regarding Discrepancies.

a. Due Diligence. Prior to commencing the Work, Contractor shall carefully examine and compare the Contract documents, including, but not limited to, all (i) technical specifications, (ii) drawings, (iii) necessary surveys, and (iv) legal descriptions. Contractor shall remain familiar with, and, as necessary, refer to, such documents in the performance of the Work.

b. Prompt Coordination Regarding Perceived Discrepancies. Contractor shall promptly notify AURA of any perceived errors, omissions, or inconsistencies (collectively herein "discrepancies") in such documents. Upon notification of possible discrepancies, AURA shall promptly provide direction to Contractor remedying or otherwise addressing the matter. If Contractor proceeds with any Work in the face of a discrepancy that it does not bring to AURA's attention, it does so at its own risk.

8. Inspection of Work Site and Field Conditions.

a. Site Visit. Contractor certifies that it [attended the mandatory site visit required by AURA's solicitation for construction services // visited the site in preparing its proposal to perform the construction services required under this Contract].

b. Inspection of Work Site. Contractor certifies that it has taken steps reasonably necessary to ascertain the nature and location of the Work, and that it has investigated and

satisfied itself as to the general and local conditions which may affect the Work or its costs, including, but not limited to:

- (i) The character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site and the drawings, specifications, and information provided in this Contract or the solicitation leading to this Contract;
- (ii) Conditions bearing upon transportation, disposal, handling, and storage of materials;
- (iii) Availability of labor, water, electric power, and roads;
- (iv) Uncertainties of weather, river stages, tides, or similar physical conditions at the site; and
- (v) The character of equipment and facilities needed to accomplish the Work.

c. Contractor Acceptance of Risk. Contractor agrees that any failure by it to take the actions described in this Section 8 (Inspection of Work Site and Field Conditions) will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or from proceeding to successfully perform the Work without additional expense to AURA.

d. Continuing Due Diligence. Prior to commencing any substantial portion of the Work, Contractor shall take all prudent field measurements and shall promptly report to AURA any conditions at the worksite that may affect such portion of the Work.

9. Licenses. Contractor shall obtain and maintain, at its own expense, all licenses necessary to perform the Work, including licenses of Contractor and Contractor's personnel. Upon request by AURA, Contractor shall provide proof of licensure. Contractor shall require all subcontractors and suppliers to similarly maintain all customary licenses.

10. Permits, Inspections, and Notices. In performance of the Work, at its own expense, and in accordance with applicable laws, codes, rules, and/or orders, Contractor shall (i) obtain and maintain all necessary permits, (ii) provide all required or customary notices, and (iii) obtain all required or customary inspections.

11. Utilities.

a. Access to Existing Utilities. For performance of the Work, Contractor shall be permitted access to the following utilities at the worksite from existing AURA outlets and supplies:

Utility Type	Access
--------------	--------

Commented [SS1]: Suzanne: We drafted the utilities section to call for AURA providing access to existing utilities and bear the cost, but that any additional utilities will be metered and paid by contractor.

[inset type, e.g. "Electric"]	[insert brief description of access, e.g. "Available from existing building electrical supply."]
[insert "None, N/A"]	

The reasonable cost of such utilities shall be borne by AURA. Contractor shall bear the cost of any unreasonable or wasteful consumption of such utilities.

b. Additional Utilities. To the extent that any utilities listed immediately above are insufficient for efficient performance of the Work, or as otherwise specified in **Appendix 1**, Contractor shall, in a workmanlike manner, install and maintain temporary connections and distribution lines necessary to the efficient completion of the Work, as well as all meters necessary to measure the amount of each utility used. At the completion of the Work, Contractor shall remove all the temporary connections, distribution lines, meters, and associated equipment. All cost of installation and removal, and the cost of utilities consumed through such temporary connections, shall be borne by Contractor.

12. Material Standards. All equipment, materials, and articles incorporated into the Work shall be consistent with the specifications set forth in **Appendix 1**. Further, all such equipment, materials, and articles shall be new and of the most suitable grade for the purposes intended. Contractor shall promptly bring to AURA’s attention any questions relating to materials.

13. Performance Standards.

a. Contractor Competence. All means, techniques, sequences, and procedures used by Contractor in performance of the Work shall be in accordance with industry standards and any other standards specified in this Contract. Contractor shall perform all Work in a sound, competent, skillful, professional, and workmanlike manner, with a level of care, diligence and skill consistent with industry standards for same or similar work.

b. Contractor Responsibility for Employees, Agents, and Subcontractors. Contractor shall be responsible for any acts or omissions of its employees, agents, and subcontractors, and any other persons or entities performing any portion of the Work on Contractor’s behalf.

c. Right of Removal. AURA may, in its sole discretion, require that the Contractor remove from the Work any Contractor employee or agent that AURA deems incompetent, careless, or otherwise objectionable. Prior to exercising such discretion, AURA’s Contracting Officer shall confer in good faith with Contractor regarding its reasons for requiring removal of such person(s). Any such final demand for removal shall be in writing from AURA’s Contracting Officer.

14. Access to AURA Facilities.

a. Access. Contractor shall be granted access to the portions of AURA facilities necessary to efficiently accomplish the Work.

b. AURA Access Procedures. Contractor shall cooperate in good faith with AURA access procedures and credentialing, and shall ensure all of its personnel, subcontractors, and suppliers cooperate with the same. Matters of access shall be coordinated through AURA's Contracting Officer [and/or Project Manager].

c. Facility Rules. Contractor, its personnel, and subcontractors, shall obey all rules applicable to conduct within AURA facilities and comply with the reasonable direction of facility managers. In the event any such rules or direction becomes an impediment to efficient performance of the Contract, Contractor shall promptly bring the matter to the attention of AURA's Contracting Officer.

d. Utility Disconnections and Shutoffs. To the extent that Contractor must temporarily disconnect or shutoff any utilities to perform Work, Contractor shall coordinate in advance with AURA's Project Manager to limit impacts to other AURA activities. Such disconnections or shutoffs shall be limited to the maximum extent practical to affect only the area necessary to efficiently accomplish the Work.

15. Worksite Maintenance and Cleanup. Contractor shall, at all times in performance of the Work, keep the worksite and any adjacent areas, including but not limited to staging or storage areas, free from accumulations of waste materials, debris, and rubbish. Upon completion of the Work, Contractor shall leave the worksite in a clean, neat and orderly condition. Structures, fixtures, drywall, and similar items affected by the Work shall be returned to, and left in, a clean, complete and operable state upon completion of the Work.

16. Safety.

a. Protection of Persons and Property. In performance of the Work, Contractor shall take reasonable precautions to protect the safety and health of its employees, AURA personnel, others present at the worksite, and members of the general public, from all hazards and dangers to life or property.

b. Compliance with OSHA Requirements and Public Safety Laws. Contractor shall comply with all health, safety and fire protection laws and regulations, including the Occupational Safety and Health Act ("OSHA") and any regulations and standards implemented pursuant thereto, as well as any similar state or local requirements.

c. Safety Program. Contractor shall establish and maintain an adequate safety program, including a safety plan specific to the Work, that complies with recognized safety standards and all applicable laws, statutes, rules and regulations, including but not limited to, those required under OSHA (collectively "Contractor's Safety Program"). Contractor shall ensure that all personnel engaged in performance of the Work have familiarized themselves with all pertinent aspects of the Contractor's Safety Program. Upon request by AURA, Contractor shall provide AURA evidence that it has implemented such a program and a copy of the Work-specific safety plan. Additionally, Contractor's Safety Program shall incorporate any reasonable guidance provided by AURA relating to the location and nature of the Work.

Commented [S2]: Suzanne: The concept of a safety plan/program is consistent with industry practice. If desired, we could back off the information sharing elements. That said, given the government interest in the facilities that are likely to be subject to work under these construction agreements, I believe the balance described here (which follows largely the current AURA version) is a good balance.

d. Records of Accidents and Safety Events. Contractor shall maintain an accurate record of all accidents, deaths, and any diseases or injuries arising out of, or occurring in the course of, the Work. Contractor shall promptly provide AURA with notice of any major accidents, deaths, serious diseases, and/or serious injuries occurring in the course of the Work. Upon request, Contractor shall provide AURA with the details of the same.

e. No Third-Party Beneficiaries. The requirements of this Article 2, Section 16 (Safety) are intended solely for the benefit of AURA. They shall not be construed as enforceable by any third party, including, but not limited to, Contractor’s employees.

17. Toxic or Hazardous Substances.

a. Strict Compliance with Laws. Contractor shall comply with all applicable federal, state, and local environmental laws, statutes, regulations and ordinances in performance of the Work.

b. Release or Disturbance of Toxic or Hazardous Substances. Contractor shall ensure that any toxic or hazardous substances or materials used or encountered in the performance of the Work are not released in a harmful way to the environment. All improper releases of any toxic or hazardous substance or material (including but not limited to, asbestos, lead, polychlorinated biphenyl (“PCB”), lubricating fluids, fuel, solvents, and paint) by the Contractor, its subcontractors, or any other persons or entities performing the Work, shall be immediately reported to AURA and properly reported to any public authorities to which reporting is required.

c. Prompt Remediation. Upon any release, spill, or disturbance of any toxic or hazardous substance or material, Contractor shall promptly and properly contain, clean and remediate, or provide for containment, cleaning and remediation of, the condition at its own expense.

18. Coordination of Work with Other AURA Activities or Interfacing Work. In the event the Work for which Contractor is responsible is co-located with, associated with, or interfaces with, other work of AURA, any AURA partner, or any other AURA contractor, Contractor shall cooperate in good faith with AURA and such other entities to facilitate efficient and coordinated performance of all such activities. In the event Contractor believes that work or activities of AURA, any AURA partner, or any other AURA contractor will negatively impact Contractor’s Work, Contractor shall promptly notify AURA’s Contracting Officer, and the Parties will collaborate in good faith to minimize such impact.

19. Project Management System. Contractor shall have and maintain a project management system capable of providing accurate schedule, budget and cost information related to performance of the Work, including without limitation, information related to tasks completed, tasks remaining to be completed, critical and non-critical paths in project scheduling, and actual project costs as compared to budgeted costs.

Commented [SS3]: Suzanne: We made this section more robust than the existing AURA version. We used AIA and FAR samples to arrive at this language, which is more specific yet should be fully acceptable to industry in preparing proposals and performing work.

Article 3

Performance Schedule

1. Performance Schedule. Unless otherwise approved in writing by AURA, Contractor shall submit documents and complete the Work as set forth in the schedule below. Prior to commencement of Work at the worksite, AURA shall issue to Contractor a written notice to proceed.

Preliminary Document Due Dates		
Proof of Performance and Payment Bonds		[insert due dates]
Proof of Required Insurance Coverages		
WBS [Other Work Plan/Schedule]		
Acceptance Test Plan		
List of Subcontractors (if applicable, may have from Contractor's proposal)		
[Other]		
Construction Activities/Phases of Work		
Component/Phase	Start Date	Substantial Completion Date
[insert description]		

Commented [S54]: Suzanne: We have structured the performance schedule to be flexible/modifiable for specific construction endeavors, breaking it into (i) delivery dates for preliminary documents and (ii) start dates and substantial completion dates for major phases of work.

AURA's original contract did not speak in terms of substantial completion, but such a concept is consistent with the AIA and FAR approaches – and we believe will resonate with contractors.

2. Calendar Days. Throughout this Contract, “days” shall mean calendar days unless otherwise specifically stated.

**Article 4
Payment**

Commented [S55]: Suzanne: We have proposed two options here, fixed price and cost-reimbursement with fixed fee. If time and materials is also needed, we can add that option as well.

Option 1: Fixed Price:

1. Total Fixed Contract Price and Payment. AURA shall pay the Contractor a total fixed price of [Insert Total Contract Price] (the “Total Contract Price”). Unless otherwise expressly agreed by AURA, all taxes, fees, permitting costs, and other expenses arising from or related to the Work shall be borne by Contractor and considered included in the agreed Total Contract Price. Contract payments shall be made as set forth in this Article 4 (Payment).

2. Payment Schedule (Fixed Price).

a. Agreed Schedule of Payment for Conforming Work. AURA shall make payments monthly as the Work proceeds. Such payments shall be in accordance with a payment schedule

agreed by the Parties and set forth in Appendix 4, which is hereby incorporated by reference into the Contract. Notwithstanding the forgoing, AURA shall have the right to withhold or refuse payment for any nonconforming Work as otherwise set forth in this Contract.

b. Contractor Payment Requests. Contractor shall submit requests for payments to AURA's Contracting Officer. Such requests shall contain: (i) the contract number; (ii) the specific amount requested; (iii) a progress report stating what components of the work have been accomplished (including an updated WBS, if applicable); (iv) a statement of amounts paid to subcontractors to date; and (v) any additional supporting information required by AURA's Contracting Officer. The request shall include the following certification:

[Contractor] hereby certifies, to the best of its knowledge and belief, that:

- The amounts requested are only for performance of Work under AURA Contract number [insert contract number] in accordance with the terms and conditions of the Contract, including but not limited to, all applicable technical specifications;
- All payments due to any subcontractors or suppliers performing work covered by this Contract from any previous payments received have been made to said subcontractors or suppliers; and
- Proceeds from this request for payment will be used to provide timely payments to any subcontractors or suppliers performing work covered by this Contract.

c. Payment by AURA. Subject to AURA's rights to reject nonconforming Work or otherwise withhold or refuse payments for performance failures, AURA shall make payment within thirty (30) days of receipt a proper request from Contractor.

d. Contractor Payments to Subcontractors. Contractor shall pay amounts due to its subcontractors no later than ten (10) days after receipt of payment made by AURA to Contractor. Additionally, Contractor shall require such subcontractors to make timely payments to any lower tier subcontractors.

Option 2: Cost Reimbursement:

1. Cost Reimbursement. This Contract is a cost-reimbursement-plus-fixed-fee contract. Routine Contract payments shall be made as set forth in this Article 4 (Payment).

a. Total Contract Price. The maximum amount paid to Contractor (for all Work by Contractor and any subcontractors), as reimbursement of allowable costs plus Contractor's fee, shall not exceed [Insert Total Contract Price] (the "Total Contract Price").

Commented [S56]: Suzanne: We have set the payment schedule for the fixed price approach as an Appendix to give you and your team flexibility on how you would want to schedule payments, and whether there would be any particular formula. This enables flexibility if you'd like the vendor to propose options, or flexibility for AURA to dictate particular approaches for bigger or smaller jobs.

We have not specifically called for a 10% holdback (though it is not an unusual concept at all), with the expectation that any such holdback would be addressed in the payment schedule of Appendix 4. If you would like, we could find a way to be more specific on that point in the body of the agreement.

b. Allowable Costs. This Contract is funded with federal funds. As such, “allowable costs” shall include only such costs as are allowable under the federal cost principles set forth at [2 C.F.R. Part 200, Subpart E / 31 C.F.R. Part 31]. Any questions regarding allowability of costs shall be promptly submitted to AURA’s Contracting Officer. AURA shall reasonably respond to specific advance questions about allowability of costs.

d. Questioned Costs. AURA shall have the right to question any cost submitted by Contractor. If a cost is questioned, the Parties shall cooperate in good faith to evaluate allowability. Payments due for costs not questioned on a payment request shall be not be withheld or delayed pending resolution of the questioned amounts.

c. Disallowance of Unallowable Costs. If any reimbursed cost is determined to be unallowable by the government or AURA, it shall not be reimbursed. Further, all payments for allowable costs under this Contract shall be considered provisional for a period of five (5) years. If, within five (5) years of reimbursement, the government or AURA determines a cost is unallowable, the Contractor shall promptly repay AURA any such amount. In the event that a cost is challenged as unallowable by the government, AURA shall cooperate in good faith with the Contractor, at the Contractor’s sole expense, to assert reasonable claims vis-a-vis the government for payment of such costs. The rights and obligations of this Section 1(c) (Disallowance of Unallowable Costs) shall survive the expiration or termination of this Contract.

2. Payment Schedule (Cost Reimbursement).

a. Agreed Schedule of Payment for Conforming Work. AURA shall make payments monthly as the Work proceeds. Such payments shall be in accordance with a payment schedule agreed by the Parties and set forth in **Appendix 4**, which is hereby incorporated by reference into the Contract. Notwithstanding the forgoing, AURA shall have the right to withhold or refuse payment for any nonconforming Work as otherwise set forth in this Contract.

b. Contractor Payment Requests. Contractor shall submit requests for payments to AURA’s Contracting Officer. Such requests shall contain: (i) the contract number; (ii) the specific amount requested; (iii) an itemized list of costs incurred that is sufficiently detailed for AURA’s Contracting Officer to reasonably assess allowability of costs; (iv) a clear statement of the portion of the fee invoiced on the payment request; (v) a progress report stating what components of the work have been accomplished (including an updated WBS, if applicable); (vi) a statement of amounts paid to subcontractors to date; and (vii) any additional supporting information required by AURA’s Contracting Officer. The request shall include the following certification:

[Contractor] hereby certifies, to the best of its knowledge and belief, that:

- The amounts requested are only for performance of Work under AURA Contract number [insert contract number] in accordance with the terms and conditions of the Contract, including but not limited to, all applicable technical specifications;

- All payments due to any subcontractors or suppliers performing work covered by this Contract from any previous payments received have been made to said subcontractors or suppliers; and

- Proceeds from this request for payment will be used to provide timely payments to any subcontractors or suppliers performing work covered by this Contract.

c. Payment by AURA. Subject to AURA's rights to reject nonconforming Work or otherwise withhold or refuse payments for performance failures, AURA shall make payment within thirty (30) days of receipt a proper request from Contractor.

d. Contractor Payments to Subcontractors. Contractor shall pay amounts due to its subcontractors no later than ten (10) days after receipt of payment made by AURA to Contractor. Additionally, Contractor shall require such subcontractors to make timely payments to any lower tier subcontractors.

3. Final Payment, Waiver of Claims, and Release of Any Liens.

a. Final Request for Payment. Upon Final Acceptance in accordance with Article 13 (Acceptance), Contractor shall submit to AURA a request for final payment. Such request shall contain the following certification:

[Contractor] hereby certifies, to the best of its knowledge and belief, that:

- This request for final payment is just and correct to the best of [Contractor's] knowledge and belief;
- Payment therefore has not been received;
- This request for final payment has been prepared from the books of account and records of Contractor and unencumbered title to the material and work completed represented herein rests in the Contractor and is hereby conveyed to AURA in return for final payment.
- Upon payment of the amount requests, Contractor shall and does acknowledge full payment for the Work and waives any future claims to any further payments under or related to this Contract for any reason whatsoever, except to the extent Contractor has submitted specific claims or disputes in writing to AURA's Contracting Officer.

b. Release of Liens and Encumbrances. Prior to final payment, Contractor shall provide AURA a release of all liens and encumbrances of any kind upon the Work.

4. Payments Do Not Constitute Acceptance. No payment made by AURA to Contractor shall be deemed acceptance of Work by AURA. The making of payments shall in no way excuse the Contractor from full and proper performance of its obligations under this Contract, nor shall it constitute a waiver of any of AURA's rights or remedies this Contract.

5. AURA's Right to Withhold or Reduce Payment(s). The terms of this Article 4 (Payment) shall not be construed as in any way limiting the rights of AURA otherwise set forth in this Contract to withhold, reduce and/or refuse payments for events such as (but not limited to) nonconforming Work or delays.

Article 5
AURA Contracting Officer and Project Manager

1. AURA Contracting Officer.

a. Designation. AURA's designated Contracting Officer for this Contract is:

Name: [insert]
Email: [insert]
Phone: [insert]

b. Authority of Contracting Officer. The Contracting Officer is AURA's primary representative for oversight and administration of this Contract. The Contracting Officer is the only person authorized to approve changes to this Contract.

2. AURA Project Manager.

a. Designation. AURA's designated Project Manager for this Contract is:

Name: [insert]
Email: [insert]
Phone: [insert]

b. Authority of Project Manager. The Project Manager is authorized to act on behalf of AURA under this Contract for purposes of overseeing day-to-day progression of the Work, including (i) inspecting the Work and components thereof, and (ii) providing direction to the Contractor regarding technical aspects of the Work. AURA's Project Manager has no authority to amend or change the terms of this Contract. Technical direction by AURA's Project Manager shall only be valid if it: (i) is consistent with the SOW, (ii) does not constitute a new assignment of Work or material change to agreed performance obligations, *and* (iii) does not create any additional cost of contract performance beyond that contemplated for the agreed Work. In the event that Contractor believes that any direction provided by the Project Manager may constitute

Commented [S57]: Suzanne: We have made the assumption that AURA will have a designated Project Manager for work of this nature, in addition to the Contracting Officer. The main authority we placed with the Project Manager was the right to accept work. Everything else resides with the Contracting Officer. We can certainly adjust that to AURA's practices.

additional work or a change to the agreed Contract terms, Contractor shall promptly notify AURA's Contracting Officer.

**Article 6
Contractor's Project Manager**

Contractor shall designate, in writing to AURA, an individual to serve as Contractor's Project Manager within ten (10) days of award of the Contract. The Project Manager shall be (i) qualified, (ii) sufficiently senior within Contractor's organization, and (iii) sufficiently knowledgeable about the Work to efficiently manage the Work hereunder. Contractor's Project Manager shall be: (i) the primary contact for Contractor in all matters related to this Contract; (ii) responsible for the administration, coordination, and supervision of the Work for Contractor; and (iii) authorized to act on behalf of, sign for, and accept responsibilities on behalf of Contractor. Contractor shall not replace the Project Manager without the prior written approval of AURA.

**Article 7
Coordination and Information Sharing**

1. Progress Reports. Contractor shall submit to AURA, on or about the first day of each and every month, a progress report, which shall include: (i) a brief summary of the status of the Work (including, if applicable, an updated WBS), (ii) a list of any problems or concerns related to the work, and (iii) any actions requested of AURA to accommodate the Work. To the extent relevant, such submission may be coordinated with submissions required for payments (if any) to avoid redundancy.
2. Regular Meetings. AURA's Project Manager and/or Contracting Officer may call and conduct meetings and conferences as he or she deems necessary for purposes of review, discussion, presentation or coordination of the Work. Such meetings will generally be held quarterly but, may be held more or less frequently at the discretion of AURA. All meetings shall be held at a location designated by AURA that is reasonably accessible from the worksite. Contractor's Project Manager shall attend all such meetings and conferences. Additionally, other representatives of Contractor and its subcontractors shall attend such meetings and conferences if reasonably requested by AURA.
3. Publicity and News Releases. All Contractor publicity and news releases relating to this Contract shall be coordinated in advance with AURA.
4. Record Access. AURA shall have the right, upon reasonable notice, to inspect and copy all information, records, and documents related to the Work in the possession of Contractor and its subcontractors. Contractor shall ensure all subcontracts provide for such access.
5. Notice of Labor Disputes. Contractor shall promptly notify AURA's Contracting Officer whenever Contractor becomes aware of an actual or potential labor dispute that may delay the timely performance of this Contract. Contractor shall require all subcontractors to provide similar notices.

Article 8 Change Orders

1. Changes to Work. AURA shall have the unilateral right, through its designated Contracting Officer, to order changes in the Work within the general scope of this Contract (herein "Change Orders"). All Change Orders shall be in writing.
2. Adjustments to Price or Performance Schedule Relating to Changes.
 - a. Right to Adjustment. If any Change Orders cause an increase or decrease in Contractor's costs of performance, or impact the time required for performance of any portion of the Work, the Contracting Officer shall, upon Contractor's proper and timely written request to adjust the contract price, contract schedule, or both, modify the Contract in writing accordingly. Any such adjustment shall be commensurate with the scope and complexity of the modified Work.
 - b. Request for Adjustment. Contractor must assert its right to an adjustment in price and/or performance schedule in writing to AURA's Contracting Officer (herein a "Request for Adjustment") within thirty (30) days from the date of Contractor's receipt of Change Order. Contractor's Request for Adjustment shall include:
 - (i) A written statement setting forth the nature and basis of the request, including a specific request for adjustment of the price and/or performance schedule;
 - (ii) If requesting a price adjustment, an itemized breakdown of costs resulting from the Change Order, in sufficient detail to permit proper analysis of material, labor, equipment, subcontract, and overhead cost impacts; and
 - (iii) Documentation supporting asserted cost or performance impacts (including, if applicable, an updated WBS).
 - c. Contractor's Obligation to Proceed. If the Parties cannot promptly agree on upon an appropriate adjustment to contract terms, AURA shall have the right to require Contractor to nonetheless proceed promptly with the Work as modified, and Contractor shall be entitled to payment of an additional amount equal to its actual incremental increased cost of performance while the Parties continue to negotiate the final price adjustment. Alternatively, upon failure to promptly agree to a price adjustment, in its sole discretion, AURA shall have the right to (i) direct Contractor to proceed with the Work as originally stated or (ii) identify an alternate means by which to accomplish the additional Work (including engaging an alternate contractor for the additional Work).
4. Changes Must be In Writing. This Contract may only be amended in writing by agreement of AURA's Contracting Officer. Any purported oral agreements or orders to modify this Contract shall be null and void. If Contractor receives direction from any AURA representative other than the Contracting Officer that it believes constitutes a Change Order, Contractor shall promptly bring the matter to the Contracting Officer's attention.

Commented [SS8]: Suzanne: We adopted a formulaic approach to Change Orders. Our view was that for large endeavors, a formulaic approach adds more value than any harm/inefficiency it may cause.

We have also included a "Request for Adjustment" process that is somewhat formulaic, but which we then adopt as a process for most "claims" by the Contractor during performance. The goal is to keep the procedures straight-forward and consistent throughout. If you feel it is too rigid, we can adjust.

Article 9
Differing Site Conditions

1. Site and Contract Documents Examination Obligation. As set forth in Article 2 (Scope of Work), Contractor had an obligation to conduct a diligent examination of the contract documents (including technical specifications) and the worksite in preparation of its proposal to perform these construction services. No condition which was reasonably ascertainable in the course of such examinations shall be considered covered by this Article 9 (Differing Site Conditions).
2. Differing Site Conditions. In the event that Contractor encounters conditions at the worksite (i) that differ materially from (a) those indicated in this Contract, and/or (b) conditions ordinarily encountered and generally recognized as inhering in work of the character covered under this Contract *and* (ii) which could not be identified through the processes and required diligence described in Section 1 (Site and Contract Documents Examination Obligation) immediately above, Contractor shall promptly, and before the condition is disturbed, give written notice to AURA. Such conditions are termed herein “Differing Site Conditions.”
3. Cooperation in Good Faith Regarding Differing Conditions. Upon written notification by Contractor of conditions it believes to be Differing Site Conditions, AURA shall promptly investigate the matter. If AURA determines that the site conditions constitute Differing Site Conditions, AURA shall direct the Contractor to promptly prepare a Request for Adjustment in accordance with the process and standards set forth in Article 8 (Change Orders) and the Parties shall proceed with such process to accomplish reasonable adjustment to the Contract price and/or schedule.

Article 10
Delays

1. Time is of the Essence. Time is of the essence in the performance of the Work.
2. Notice of Possible Delay. Contractor must notify AURA promptly if it determines that any date set forth in Article 3 (Performance Schedule) is not likely to be met. Such notice shall include an explanation of the delay and a detailed description of impact to the Work, including the overall performance schedule. If applicable, such notice shall include a description of any impact to the WBS.
3. Proposed Revisions to Performance Schedule. In the event of a delay, Contractor shall propose specific revisions to the performance schedule. Such proposal shall be calculated to minimize impact to AURA operations.
4. Excusable Delays. If the cause of delay is beyond Contractor’s reasonable control and was not a delay that Contractor could reasonably have anticipated and avoided, the Parties shall cooperate in good faith to adjust the performance schedule to accommodate the delay, which shall be deemed an “Excusable Delay.” If the Contract is a fixed price contract, such adjustment to the performance schedule shall be without adjustment to the Total Contract Price. If the

Contract is a cost-reimbursement contract, the Contractor shall promptly provide AURA a statement of any expected increase in cost of performance (with supporting information and documentation), which increase shall be without adjustment to Contractor's fee, and the Parties shall confer in good faith regarding performance options in light of the delay (to include a possible increase in the Total Contract Price).

5. AURA Rights for Unexcusable Delay. In the event of any delay not covered by Section 4 (Excusable Delays) immediately above, AURA shall have the right to reduce the contract price and payments by an amount commensurate to the cost impact to AURA caused by the delay. If the delay is so substantial that AURA cannot reasonably endure the delay in performance, AURA may terminate the Contract.

6. Liquidated Damages.

a. Notwithstanding the remedies set forth above, the Parties agree that, for delays other than Excusable Delays, AURA shall be entitled to liquidated damages in the sum of [\$] per calendar [day/week] of [late delivery / performance of any phase of work].

b. Lateness shall be measured against the performance schedule set forth in Article 3 (Performance Schedule). In calculating days for purposes of liquidated damages: (i) each day shall be counted as commencing after midnight of the previous day, (ii) each partial day shall count as a full day, (iii) the due date shall not be counted, and (iv) the day of actual completion/delivery shall be counted. Delayed performance excused in writing by AURA's Contracting Officer shall not be considered late.

c. The Parties acknowledge and agree that the sum set forth in this clause was set based upon the nature of the Work under this Contract and fairly represents an estimate of foreseeable damages to AURA as a result of late delivery/performance.

d. If AURA invokes this liquidated damages remedy, the amount calculated hereunder shall be deemed to fully compensate AURA for actual costs incurred as a result of the unexcused delay for which it was invoked. AURA shall be entitled to offset any payments due Contractor by the amount of applicable liquidated damages.

Article 11 Stop Work Orders

1. Stop Work Orders. Notwithstanding any other term of this Contract, AURA shall have the right to order, in writing, that Contractor immediately suspend performance of the Work, or any portion of the Work, for any reason whatsoever, including, but not limited to, a determination by AURA that the Work, or any portion thereof, fails to conform to the requirements of the Contract. In all cases of suspension, Contractor shall take all reasonable steps to minimize the incurrence of any costs resulting therefrom and shall cooperate in good faith with AURA regarding the same.

a. Stop Work Orders for AURA's Convenience. If the Work, or any portion thereof,

is suspended for reasons involving no failure by the Contractor (or its subcontractors, employees, or agents) to perform its obligations under this Contract, the event shall be treated as an Excusable Delay.

b. Stop Work Orders Related to Contractor Fault. If the Work is suspended for reason(s) involving fault of the Contractor (or its subcontractors, employees, or agents), compensation to AURA shall be addressed under the terms of this Contract setting forth remedies for default, nonconforming Work and delays other than Excusable Delays (including liquidated damages).

2. No Obligation for AURA to Stop Work. AURA's right to suspend the Work, or any portion thereof, is for the sole benefit of AURA. AURA shall be under no obligation whatsoever to suspend the Work, or any portion thereof, for the benefit of Contractor, or any other person or entity.

Article 12 Testing and Inspection

1. Acceptance Test Plan.

Contractor shall prepare an Acceptance Test Plan ("ATP") appropriate to the Work and provide such plan to AURA prior to commencing Work at the worksite. The Acceptance Test Plan shall describe how Contractor will determine whether the Work complies with all requirements of this Contract. AURA's Contracting Officer may, in writing, request at any time that changes be made to Contractor's Acceptance Test Plan consistent with the requirements and purpose of this Contract. Contractor shall adopt such changes unless unreasonable.

2. Testing and Inspection.

a. Contractor's Quality Assurance Program.

(i) Contractor shall prepare and maintain a Quality Assurance Program and Plan (collectively herein "QA Program") that addresses inspection, testing, measurement, and other activities designed to ensure the quality of the Work, including the Work's conformance to industry standards and the requirements of this Contract. Contractor shall only tender Work, or portions thereof, to AURA for testing and/or inspection after such Work has: (i) first been tested and/or inspected by Contractor in accordance with its QA Program and (ii) determined by Contractor to be in conformity with industry standards and the requirements of this Contract.

(ii) Contractor shall maintain records evidencing all inspections, tests and measurements related to the Work, including the procedures applied and results. Upon request, Contractor shall promptly provide AURA a copy of any such records.

b. AURA Testing and Inspection.

(i) Right to Test and Inspect. All Work covered under this Contract shall be

Commented [SS9]: Suzanne: The Acceptance Test Plan concept exists in AURA's current contract. We have retained it here and been explicit about it being a deliverable. Note that we have also included a placeholder in the Performance Schedule section as well.

This concept does not exist explicitly in either FAR or AIA contracting terms. It may be useful to provide additional detail or to consider removing it. Alternatively, we can keep it as is with the flexibility for AURA to drive the requirement in negotiations.

Finally, we could modify it to an "Inspection and Test Plan" to remove the reference to acceptance, but still have a "plan" concept.

Commented [SS10]: Suzanne: The Construction QA Program obligation existed in AURA's original construction contract. We have retained it here.

subject to testing and inspection by AURA at all places and at all reasonable times to ensure strict compliance with the terms of this Contract. AURA shall conduct any tests and inspections in a manner that will not unduly delay the Work.

(ii) Contractor Support of Tests and Inspections. Contractor shall promptly furnish, at no cost to AURA, all facilities, labor, and material reasonably necessary to perform safe and convenient tests and inspections. If any portion of the Work identified for testing or inspection is not ready for such at the time specified by the Contractor, or when prior rejection makes reinspection and retesting necessary, Contractor shall be responsible for any additional cost of testing or inspection that results therefrom.

(iii) Use of Third-Party Inspection Entities. AURA may, at its discretion, engage one or more independent testing and inspection agencies (“Inspection Entities”) to test or inspect any aspects of the Work. Such independent agencies shall have similar rights regarding testing and inspection that are afforded to AURA and Contractor shall cooperate in good faith with such Inspection Entities.

c. Testing and Inspection for AURA’s Benefit Only. Tests and inspections conducted by AURA, or on its behalf, are for AURA’s sole benefit. Such tests and inspections shall not relieve Contractor of its responsibility to provide adequate quality assurance measures. AURA assumes no obligation to perform any tests or inspections for the benefit of Contractor, or any other third party, regardless of whether such requirement is set forth in Contractor’s Acceptance Test Plan or QA Program.

d. AURA Testing and Inspection Personnel Not Authorized to Change the Work. AURA testing and inspection personnel, whether directly employed or Inspection Entities, have no authority whatsoever to change or modify any technical specifications. In the event that AURA testing and inspection personnel directly or impliedly purport to do so, AURA’s Project Manager and Contracting Officer shall be promptly informed.

3. Testing and Inspection is Not Acceptance. Tests or inspections conducted by AURA, or on AURA’s behalf, shall not constitute acceptance of any Work.

4. Non-Conforming Work. If, upon testing or inspection, AURA determines that any aspect of the Work fails to comply with the requirements or standards set forth in this Contract, AURA shall have the right to reject such Work and invoke the remedies set forth throughout this Contract.

Article 13 Acceptance

1. Substantial Completion and Punch List.

a. Substantial Completion. For purposes of this Contract, “Substantial Completion” means the Work (or a portion of the Work if applicable) is sufficiently complete (in accordance

Commented [SS11]: Suzanne: We have inserted a concept of substantial completion. This was not directly acknowledged/used in AURA’s existing construction contract. Note that we have tied the performance schedule to substantial completion. We could add a final line for “Final Acceptance” in Article 3 as well if desired.

with the specifications and standards applicable to the Work) so that AURA may occupy or use the Work for its intended purposes.

b. Punch List. Upon Substantial Completion of the Work, or a particular portion thereof designated by AURA, Contractor shall submit to AURA a list of any outstanding items to be completed or corrected prior to Final Acceptance (herein the “Punch List”). AURA shall have the right to examine the Work, or designated portion thereof, and add items to the Punch List. The Parties shall cooperate in good faith to promptly establish a final agreed Punch List and schedule for accomplishment of all items on the Punch List. Failure by Contractor or AURA to include an item on the Punch List does not excuse Contractor from its obligations to complete all Work in accordance with the terms and conditions of this Contract.

2. Final Acceptance. Final Acceptance of the Work shall only be accomplished in writing by AURA’s Contracting Officer. AURA shall not provide Final Acceptance until all of the following have been accomplished: (i) Contractor has completed all of the Work under this Agreement (except for Work related to the Warranty); (ii) AURA has been provided an opportunity to thoroughly test and inspect the Work; (iii) the Work has successfully undergone all tests and inspections set forth in the Acceptance Test Plan; (iv) all temporary utility connections have been properly removed; (v) the worksite has been returned to a clean and safe state; (vi) all Punch List items have been properly accomplished; and (vii) all known disputes under this Contract have been resolved or otherwise addressed. After accomplishment of the foregoing, AURA shall not unreasonably withhold Final Acceptance.

3. Effect of Final Acceptance. Except as otherwise expressly agreed by the Parties, AURA’s Final Acceptance shall constitute acknowledgement by AURA that Contractor has completed the Work in accordance with the terms of this Contract or otherwise satisfied its obligations hereunder. Notwithstanding Final Acceptance, Contractor shall remain liable for latent defects, fraud, gross mistakes, and warranty and guarantee obligations.

Article 14 Subcontractors and Suppliers

1. AURA Right to Reject. For good cause, AURA may, prior to, or at any point during, performance of the Work, reject and require removal and replacement of any subcontractor or supplier. Upon determining there is good cause to make such demand, AURA shall inform Contractor of its reasons and shall cooperate in good faith with Contractor regarding such removal and replacement. If the removal is necessary due to fault of the Contractor, including fault to reasonably vet its subcontractors or suppliers, removal and replacement shall be accomplished at no cost to AURA. If the removal is necessary due to reasons involving no fault of the Contractor, the Parties shall cooperate in good faith to address the event under Article 8 (Change Orders).

2. Preliminary Vetting. Unless otherwise provided herein, Contractor shall, as soon as practicable after contract award, but prior to commencing work, provide AURA a list of all subcontractors and suppliers that Contractor intends to use for the Work. Within ten (10) days,

Commented [SS12]: Suzanne: We have included this administrative condition for Final Acceptance. We can remove it if you would like. My sense is that having resolution of disputes as a prerequisite to Final Acceptance will “right size” the pressures on both Parties to get to final performance and contract closeout. For flexibility, we have drafted it to reference dispute that are “known” and to provide for those disputes to be “otherwise addressed” if a side agreement, reservation or rights, or other mechanism is desirable to get to Final Acceptance with a known/agreed caveat in a particular case.

Commented [SS13]: Suzanne: This language is more robust than what AURA’s construction contract originally had. We adopted an approach similar to that in the AIA standard contract.

Commented [SS14]: Suzanne: This 10-day period is adopted from the AIA approach. Would you like us to make it longer?

AURA shall review Contractor's list and provide Contractor notice of any unacceptable subcontractors or suppliers.

3. Excluded Subcontractors and Suppliers. For Work under this Contract, Contractor shall not use subcontractors or suppliers that are suspended, debarred, or otherwise excluded from participation in federal contracts or awards. Contractor shall vet all subcontractors and suppliers through the publicly available exclusions database at sam.gov.

4. Absences of AURA Objection Does Not Constitute Endorsement or Acceptance. AURA's failure to specifically object to any subcontractor or supplier shall not constitute any waiver whatsoever of any right or remedy by AURA for such subcontractor or supplier's failure to adequately perform.

Article 15 **Performance and Payment Bonds**

To secure faithful performance of this Contract, Contractor shall, no later than the date set forth in the performance schedule (or, if not specifically addressed in the performance schedule, than no later than the date of execution of this Contract), deliver to AURA a performance bond and payment bond, each of which shall be (i) in a sum not less than the one hundred percent (100%) of the Total Contract Price and (ii) issued by one or more sureties acceptable to AURA. The bonds shall be unconditional and remain in force during the entire term of this Contract. AURA reserves the right to require the Contractor to promptly furnish additional performance and payment bond protection if the Total Contract Price is increased.

Article 16 **Property Damage**

1. Damage to AURA Facilities, Property, or Equipment. While on AURA premises, Contractor shall be strictly liable for all damages to facilities, equipment, or other property caused by the Contractor, subcontractors, the employees and agents of each, and other persons or entities performing Work for, or on behalf of, the Contractor or its subcontractors. In the event of any damage to AURA's facilities, equipment, or other property, Contractor shall promptly notify AURA's Contracting Officer and Project Manager and reimburse AURA for the cost of repair. Alternatively, AURA reserves the right to deduct the cost of repair from any amounts owed to the Contractor under this Contract.

2. Damage to Utilities. Contractor shall protect all existing utility lines in the vicinity of the Work, whether above ground or underground. Any damage to any existing utility lines shall be property repaired by Contractor at Contractor's expense.

3. Survival. The rights and obligations of this Article 16 (Property Damage) shall survive the completion of the Work and expiration or termination of this Contract.

Article 17 **Warranty**

Commented [SS15]: Suzanne: We have simplified this language. In particular we simplified the acceptable surety language to simply state "a surety acceptable to AURA." AURA's original RFP language set forth specific standards, which we can research if you would like to pursue retaining such specificity.

Additionally, please note that a bid bond is required for federally funded construction work, but that would be part of the RFP and proposal process, not the final contract.

Finally, we have not included a caveat to except the Contractor from compliance with this requirement for small contracts. Technically it is only required by the Uniform Guidance for contracts in excess of the Simplified Acquisition Threshold. 2 CFR § 200.326.

1. Warranty. In addition to any other warranties under this Contract, Contractor warrants that the Work performed or provided under this Contract by Contractor, its subcontractors or suppliers at any tier, or any other person or entity performing Work under this Contract for, or on behalf of, Contractor is free of any defects in design, materials, equipment and workmanship. Unless this Contract provides otherwise, Contractor further warrants that all materials and equipment furnished under this Contract shall be new, of good quality, and of the most suitable grade for their intended purposes. Any Work, materials, or equipment which do not meet these requirements may be considered defective or otherwise nonconforming by AURA.
2. Warranty Period and Corrective Actions. All warranties provided by Contractor under this Article 17 (Warranty) shall continue for a period of no less than one (1) year from the date of Final Acceptance of the Work. During said period, in the event any Work, material or equipment fails to comply with the warranties provided under this Article 17 (Warranty), Contractor shall correct, repair or replace such Work, material or equipment at its own expense. Alternatively, in AURA's sole discretion, AURA may require Contractor to reimburse AURA any amount paid to Contractor for such material, equipment or portion of the Work. For any Work, equipment, or materials that have been repaired, replaced, or corrected by Contractor in accordance with this Article 17 (Warranty), the warranty shall be extended for a period of one (1) additional year from the date of AURA's acceptance of such correction, repair or replacement.
3. Warranty Notices. AURA shall notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect or otherwise nonconforming Work, material or equipment.
4. Work of Subcontractors and Suppliers. Contractor shall obtain, for the benefit of AURA, all warranties related to the Work, or any portion thereof, which any subcontractors, manufacturers, or suppliers normally provide in commercial practice. All such warranties shall be issued in the name of AURA or shall be transferable to AURA. Contractor shall take such actions as may be necessary to transfer such warranties to AURA and, if required, enforce such warranties for AURA.
5. No Limitation on Right to Reject Nonconforming Work. This Article 17 (Warranty) shall not be construed to limit, waive or in any way vitiate AURA's right to reject nonconforming Work.
6. Survival. The rights and obligations of this Article 17 (Warranty) shall survive the expiration or termination of this Contract.

Article 18 Default Remedies

1. Default. Contractor understands and agrees that all Work, requirements, and standards set forth in this Contract, including, but not limited to, those set forth in **Appendix 1**, are material terms. Contractor's failure to perform the Work in accordance with the terms and

conditions set forth herein shall constitute a material breach this Contract and Contractor shall be in default. In the event of default, AURA shall have the right to exercise all remedies available to AURA under this Contract, applicable law, and in equity, including the remedies provided in this Article 18 (Default Remedies). The remedies afforded to AURA under this Contract are not exclusive of each other.

2. Damages. Contractor shall be liable for any damages to AURA resulting from Contractor's default. Such liability shall include any costs incurred by AURA in curing, completing, or re-procuring similar construction services and/or materials as a result of Contractor's default. AURA reserves the right to withhold amounts otherwise due to Contractor that are necessary to reimburse AURA for costs incurred in correcting non-conforming Work or completing incomplete Work.

3. Additional Remedies. In the event of Contractor defaults, in addition to damages and any other available remedies, AURA may: (i) order specific performance by Contractor; (ii) direct the Contractor to correct any nonconforming Work at Contractor's sole expense; (iii) accept all or any portion of non-conforming Work, and require Contractor to provide AURA reasonable compensation for the acceptance of the non-conforming Work; and/or (iv) terminate this Contract in whole, or in part, as set forth below.

4. Survival. The rights and obligations of this Article 18 (Default Remedies) shall survive the expiration or termination of this Contract.

Article 19 Termination

1. Termination for Cause.

a. Bases for Termination. AURA may, by written notice, terminate Contractor's right to proceed with this Contract, in whole or in part, if Contractor:

- (i) Materially fails to comply with the terms and conditions of this Contract;
- (ii) Fails to prosecute the Work, or any portion thereof, with the diligence required to ensure the Work will be completed within the schedule specified within this Contract;
- (iii) Fails to maintain any license necessary to perform the Contract;
- (iv) Fails to meet the insurance or bonding requirements of this Contract;
- (v) Is debarred, suspended, or otherwise excluded (or any of Contractor's key personnel are debarred, suspended, or otherwise excluded) from participation in federal contracts or awards;
- (vi) Undergoes or experiences a material change in its financial condition that reasonably indicates it will be unable to perform its obligations under this Contract; or

(vii) Fails to comply with federal standards or requirements incorporated into this Contract.

b. Notice and Cure Period. Prior to terminating Contractor's right to proceed, AURA shall provide Contractor written notice of Contractor's failure(s) and a ten (10)-day opportunity to cure such failure(s). If any failure is not cured within the ten (10)-day cure period, AURA may, by further written notice, immediately terminate the Contractor's right to proceed.

c. Termination Remedy Cumulative. In the event of termination for cause, AURA shall be entitled to damages to the extent otherwise authorized for Contractor default. AURA's right to terminate this Contract shall be cumulative with AURA's other remedies.

3. Termination Without Cause. AURA shall have the unilateral right to terminate performance under this Contract, in whole or in part, without cause, upon thirty (30) days' written notice to Contractor. In the event the Contract is not terminated in its totality, Contractor shall continue performing any portions of the Work not terminated.

4. Contractor's Obligations Upon Termination. If Contractor's right to proceed is terminated, whether for cause or without cause, AURA may take over the terminated Work, and Contractor shall assign to AURA all of Contractor's right, title, and interests in the terminated Work, including, but not limited to, subcontracts and materials. Contractor shall cooperate in good faith with AURA to turn over all terminated Work in a manner calculated to facilitate AURA efficiently taking over the Work directly or through a replacement contractor. Contractor shall further cooperate in good faith with AURA to wind down all terminated Work in such a manner as to avoid unnecessary continuing expenses or obligations.

5. Costs of Termination. Upon termination for cause, the Parties shall negotiate final payment as appropriate, taking into account the basis for termination and any liabilities of Contractor to AURA under the circumstances. Upon termination without cause, Contractor shall be entitled to payment of reasonable costs incurred as a result of the termination, including the cost of winding down and transferring work in progress to AURA.

6. Survival. The rights and obligations of this Article 19 (Termination) shall survive the expiration or termination of this Contract.

Article 20 Work In Progress

1. Access to Worksite. AURA and its authorized representatives shall, at all times, have reasonable access to the worksite and all other locations necessary for AURA to exercise its rights under this Contract for testing and inspection of any Work.

2. Title to Materials and Equipment. Title to any materials and equipment incorporated into the Work, or any materials and equipment delivered to the worksite for storage, installation or

use, shall not pass to AURA until Final Acceptance in accordance with the terms of this Contract.

3. Risk of Loss. Contractor assumes all risk of damage to, or destruction of, the Work until Final Acceptance by AURA. Contractor shall repair or replace, at Contractor's expense, any Work damaged or destroyed prior to Final Acceptance regardless of cause, including, but not limited to, flood, tides, fire, or any other natural disaster. This right and obligations of this Section 3 (Risk of Loss) shall survive expiration or termination of this Contract.

Commented [SS16]: Suzanne: This is an important risk-shifting term. We have provided that the Contractor remains at risk for loss of the work prior to Final Acceptance, subject to a limited exception where AURA uses or occupies the Work prior to Final Acceptance.

4. Use and Possession Prior to Completion.

a. Right of Possession. AURA shall have the right to use, or take possession of, any Substantially Completed portion of the Work. Such use and/or possession shall not be deemed acceptance of the Work.

b. AURA Risk of Loss Upon Taking Possession. In the event that AURA elects to use, or take possession of, any portion of the Work, Contractor shall be relieved of its responsibility (as otherwise set forth in Section 3 (Risk of Loss) immediately above) for loss of or damage to that portion of the Work, to the extent, and only to the extent, any such loss or damage is caused by AURA's use.

c. Delays or Increased Resulting from AURA Use or Possession. In the event that AURA elects to take possession of, or use, any Substantially Completed portion of the Work, and such possession or use delays the progress of the Work or causes additional expense to Contractor, the Parties shall address the increased cost of performance or impact to the performance schedule through the Request for Adjustment process set forth in Article 8 (Change Orders).

Article 21 Written Technical Materials

1. Ownership of Drawings, Specifications, and Other Similar Materials. In the event this Contract calls for Contractor to develop any drawings, specifications, plans, studies, surveys, models, sketches, or other similar materials (herein collectively "Written Technical Materials"), Contractor shall retain ownership of such items.

Commented [SS17]: Suzanne: We have added this language to ensure we obtain copies of such documents with adequate rights to use them in perpetuity. This is somewhat redundant with the data rights clause required by NSF (and included in Appendix 2), but we believe it a useful term in the body of the Contract regardless.

2. Delivery of Copies and Licenses to AURA. Contractor shall deliver to AURA copies of any Written Technical Materials developed in relation to the Work. Contractor shall, and hereby does, grant to AURA an irrevocable, worldwide, nonexclusive, royalty-free license to use, display, disclose, reproduce or modify (and to permit others to use, display, disclose, reproduce or modify) for any purpose whatsoever such Written Technical Materials.

3. Warranty Against Infringement. Contractor represents and warrants that none of the Written Technical Materials, do or will, in any way whatsoever, infringe or constitute misappropriation of, any right of any third party, including any copyrights, patent rights, trademark rights, trade secret rights or confidentiality rights. Contractor shall indemnify and

defend AURA against any suits or claims for copyright or patent infringement relating to Written Technical Materials delivered under this Contract.

4. Survival. The rights and obligations of this Article 21 (Written Technical Materials) shall survive the expiration or termination of this Contract.

Article 22 Indemnity

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless AURA, its directors, officers, employees and agents from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work under this Contract, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by AURA. The rights and obligations of this Article 22 (Indemnity) shall survive the expiration or termination of this Contract.

Commented [SS18]: Suzanne: We replaced the AURA version indemnification clause with essentially the AIA version. The AIA version is somewhat narrower, albeit still fairly broad in covering Contractor's negligent acts. If you would like us to present a comparison, please just let us know. I believe the AIA version is reasonable (and, though not certain on this point, likely more consistent with market practice).

Administratively, AURA's version is more specific on who would control the defense of any covered action.

Article 23 Insurance

1. Contractor Obligation.

a. Coverage Required. Contractor shall, at its own expense, from execution of this Contract through Final Acceptance of the Work, maintain in force, the following insurance coverage with no less than the following minimum limits:

(i) Comprehensive general liability coverage, including coverage for Contractual liabilities, with coverage of no less than \$1 million per occurrence and \$3 million annual aggregate;

(ii) Comprehensive automobile liability coverage, including bodily injury coverage and property damage coverage, at no less than \$1 million per occurrence and \$2 million annual aggregate;

(iii) Workers' compensation coverage at statutory limits;

(iv) Products-completed operations coverage of no less than \$1 million per occurrence and \$2 million annual aggregate;

(v) Builder's risk coverage with sufficient limits to cover the entire replacement cost of completed Work;

Commented [SS19]: Suzanne: We have adopted a robust insurance requirement to include products-completed operations coverage (which covers risk that the completed work causes harm to someone), builder's risk (which covers physical loss of work in progress), and pollution liability coverage. We can pare this back if you would like. My sense is that it would be best to test this against the market and see how it fairs before reducing obligations.

and (vi) Pollution liability insurance appropriate to the Work at customary limits;

(vii) To the extent this Contract calls for Contractor to perform any design work or similar activities, professional liability coverage with coverage of no less than \$1 million per occurrence and \$2 million annual aggregate.

b. Additional Insured. Contractor shall name AURA as an additional insured under its comprehensive general liability coverage, automobile liability coverage, and pollution liability coverage.

c. Tail Coverage. Contractor shall ensure continuing coverage for liabilities that may be asserted in relation to activities under this Contract for a period of three (3) years from the date of Final Acceptance.

d. Proof of Insurance. Upon request by AURA, Contractor shall promptly provide AURA with proof of insurance. Additionally, Contractor shall provide AURA proof of insurance upon renewal or replacement of each policy required hereunder. Contractor shall provide written notice to AURA within three (3) days if Contractor becomes aware of an impending or actual cancellation or expiration of any of the insurance policies required hereunder. Upon such notification, AURA shall have the right stop the Work until the lapse in coverage has been resolved.

2. Subcontractors. Contractor shall require all subcontractors to have and maintain coverages appropriate to their activities and consistent with customary limits.

3. Survival. The rights and obligations of this Article 23 (Insurance) shall survive the expiration or termination of this Contract.

Article 24 Relationship of the Parties

Contractor's relationship to AURA is that of an independent contractor. None of the provisions of this Contract are intended to create, nor shall be construed to create, any relationship between or among the Parties other than that of independent entities. Neither of the Parties shall be construed to be the agent, partner, co-venturer, employee nor representative of the other Party.

Article 25 Dispute Resolution

1. Informal Dispute Resolution. The Parties shall first attempt, in good faith, to promptly resolve disputes arising under this Contract informally by negotiation between AURA's Contracting Officer and Contractor's Project Manager. Upon identification of any matter of dispute, the aggrieved Party shall promptly notify the other Party of the matter and its position.

Commented [SS20]: Suzanne: We have included a similar dispute resolution clause as to what we proposed for the Service/Supply Contract. The original AURA construction contract had a clause requiring arbitration. We can remove this or could strengthen it to mandatory mediation and/or arbitration.

Except that this clause shall not be construed as limiting AURA's suspension and termination rights under Article 19 (Termination) in any way whatsoever, the Parties agree that they shall not invoke more formal means of dispute resolution, including the filing of any lawsuit, for ten (10) calendar days following the commencement of informal negotiations, unless such delay would materially prejudice the rights of the aggrieved party.

2. AURA Right to Invoke Mediation and Arbitration. If a dispute, including any allegation of breach, is not resolved by informal means as described above, at AURA's sole discretion, AURA may invoke mediation or arbitration of the disputed matter. AURA's right to invoke mediation or arbitration shall apply to all disputes, including those first raised by AURA and those first raised by Contractor. If mediation or arbitration is invoked by AURA, the mediation or arbitration shall be conducted in accordance with the applicable Commercial Rules of the American Arbitration Association. There shall be a single presiding arbitrator or mediator, and the Parties shall mutually agree to such arbitrator or mediator within thirty (30) calendar days of AURA's invocation of mediation or arbitration. Unless otherwise agreed by AURA, the place of mediation or arbitration shall be Tuscon, Arizona. Mediation and arbitration under this section shall not be mutually exclusive; AURA may first invoke mediation and later invoke arbitration. In the case of arbitration, the award rendered by the arbitrator shall be final and binding on the Parties and may be entered and enforced in any court having jurisdiction. Each Party shall bear its own costs incurred in the course of mediation or arbitration and shall bear one half of the costs of the mediation or arbitration process.

3. No Other Limitations. Except as otherwise expressly provided in this Contract, the Parties shall have and retain all rights to seek all lawful remedies for default or breach of this Contract.

Article 26 Assignment

1. Assignment Required by Federal Agency. When required by the federal agency providing the funds for this Contract, or when required by NSF in relation to management of an NSF Major Facility, Contractor agrees that AURA's rights and obligations under this Contract may be assigned to and/or assumed by the funding agency, NSF, or another entity designated by the funding agency or NSF, to serve as the successor to AURA's interests under the Contract.

2. No Assignment by Contractor. The rights, obligations and responsibilities established herein shall not be assigned, delegated, or transferred by Contractor without the express written consent of AURA.

Article 27 Applicable Law

1. Governing Law. This Contract shall be governed under the laws of the State of Arizona, without regard to its conflict of law provisions.

2. Construction in a Manner Consistent with Applicable Federal and Local Laws. Contractor's obligations under this Contract shall be interpreted and performed in a manner consistent with all applicable federal and local laws, including, but not limited to, federal and local requirements incorporated by reference and/or referenced in this Contract.

**Article 28
Miscellaneous**

1. Contract Not Exclusive. AURA reserves the right to perform the same or similar services or to contract with others for the same or similar services. Noting in this Contract shall be construed as granting Contractor exclusive rights to perform the services.

2. Most Restrictive Terms Govern. To the extent that terms related to a particular subject matter are applied in a more restrictive manner in any particular section of this Contract (including any Appendix), or by incorporation of federal requirements by reference, the most restrictive terms shall apply. Any questions regarding any perceived conflict of terms shall be promptly brought to the attention of AURA's Contracting Officer.

3. Severability. The provisions of this Contract are severable. If any clause, sentence, provision or other portion of this Contract is, or becomes, illegal, null, void, or unenforceable for any reason, or is held by any court of competent jurisdiction to be so, the remaining portions of this Contract shall continue to be valid and enforceable as to the Parties hereto, unless the Parties agree that such a clause, sentence, provision, or other portion of this Contract is of sufficient materiality to require amendment or termination of this Contract.

4. No Waivers. No assent or waiver, express or implied, of any breach of any one or more of the covenants, conditions or provisions hereof shall be deemed a waiver of any other covenant, condition or provision hereof, or a waiver of any subsequent breach of the same covenant, condition or provision.

5. Survival. All rights and obligations which, by their terms, are designated to survive the expiration or termination of this Contract shall survive such expiration or termination and constitute continuing rights and obligations.

6. Intended Beneficiaries. Except to the extent that any specific clause lists the United States government as an intended beneficiary for purposes of such clause, the only intended beneficiaries of this Contract are AURA and Contractor. Otherwise, there are no intended third-party beneficiaries of this Contract.

7. Entire Agreement. This Contract represents the complete understanding of the Parties with regard to the subject matter. Any amendments to this Contract shall be in writing and signed by both Parties. This Contract supersedes any other agreements or understandings between the Parties, whether oral or written, relating to the subject matter covered by this Contract.

IN WITNESS WHEREOF, the Parties have caused this Contract to be executed by their

duly authorized representatives, intending to be legally bound hereby.

**FOR THE ASSOCIATION OF UNIVERSITIES
FOR RESEARCH IN ASTRONOMY**

Signature: _____

Name: _____

Title: _____

Date: _____

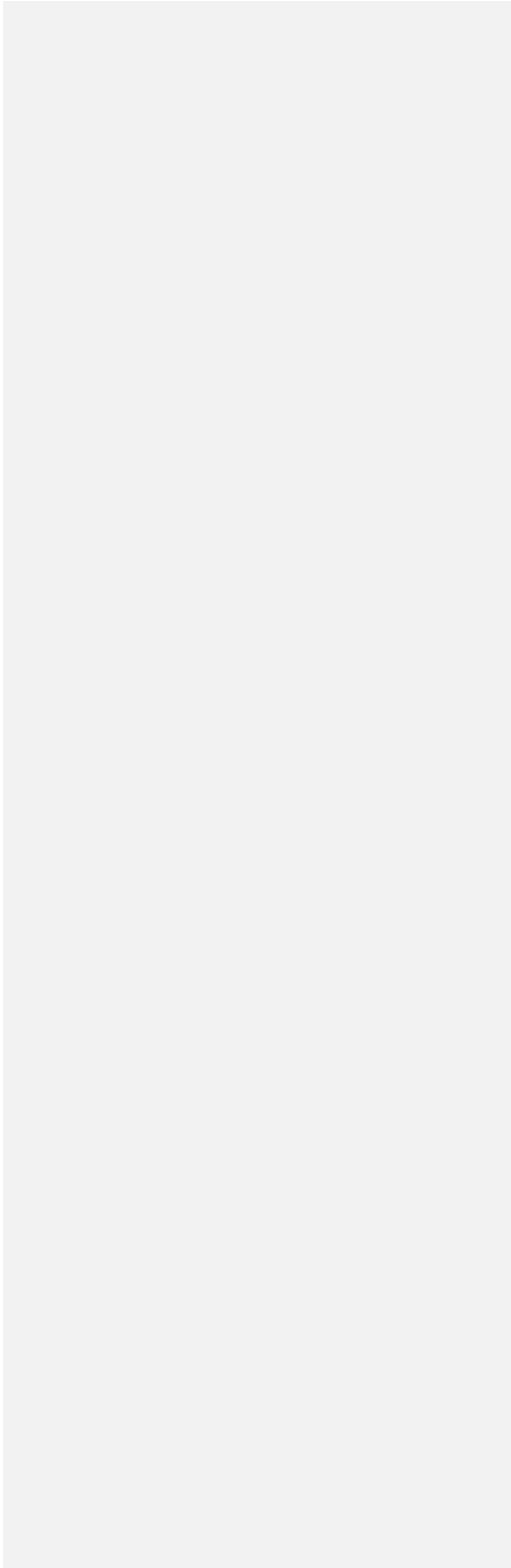
FOR [CONTRACTOR]

Signature: _____

Name: _____

Title: _____

Date: _____



**APPENDIX 1
STATEMENT OF WORK**

Items to Include/Address (not to be read as an exhaustive list):

- 1. Technical specification package (including any specified materials)*
- 2. Key personnel (if any)*
- 3. WBS (or other work schedule document)*
- 4. Any special guidance regarding access to and use of utilities*

**APPENDIX 1A
ACCEPTED ALTERNATES**

If applicable, specifically list any "Alternates" offered by Contractor as part of its proposal that AURA accepted.

**APPENDIX 2
FEDERAL REQUIREMENTS**

1. Funding Agency and Type. This Contract is funded through a Cooperative Agreement with NSF. As such, certain specific terms are required as set forth herein.

2. Federal Requirements. The performance of Contractor under this Contract is subject to the following federal requirements, which are incorporated by reference herein:

(a) 2 C.F.R. Part 200, as adopted by NSF at 2 C.F.R. Part 2500;

(b) The NSF Cooperative Agreement Financial & Administrative Terms and Conditions (CA-FATC) (May 13, 2022) as supplemented and modified by the NSF Major Multi-User Research Facility Projects CA-FATC (March 23, 2021), available at: https://www.nsf.gov/awards/managing/co-op_conditions.jsp?org=NSF; and

(c) The NSF Performance & Award Policies & Procedures Guide (“PAPPG”), available at: https://www.nsf.gov/pubs/policydocs/pappg22_1/index.jsp, to the extent the requirements of the PAPPG are not inconsistent with the CA-FATC described immediately above.

3. Whistleblower Protection. This Contract is subject to the whistleblower protection provisions of 41 U.S.C. § 4712.

4. Fly America Act. Any foreign travel funded under this Contract shall be carried out in a manner consistent with the restrictions of the Fly America Act, 40 U.S.C. § 40118. Contractor should contact AURA’s Contracting Officer with any questions regarding compliance.

5. Domestic Preference to the Extent Practicable. To the greatest extent practicable for work under this Contract, Contractor shall use goods, manufactured products, or materials produced in the United States. For purposes of this clause, “manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum, plastics and polymer-based products, concrete, glass (including optical fiber), and lumber. For purposes of this clause, “produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial smelting stage through the application of coatings, occurred in the United States.

6. Certification Regarding Lobbying (“Byrd Anti-Lobbying Amendment”). If this contract exceeds \$100,000, by signature on this Contract, Contractor’s representative certifies to the best of his or her knowledge and belief that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the

extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract or the NSF Cooperative Agreement funding this Contract, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) Contractor shall require that the language of this certification be included all subcontracts and that all subcontractors shall certify and disclose accordingly.

The above certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification may be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

7. Clean Air Act and Clean Water Act. If this Contract is valued in excess of \$150,000, Contractor shall comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and Clean Water Act (33 U.S.C. § 1251 *et seq.*). Violations must be reported to AURA, NSF, and the local Regional Office of the Environmental Protection Agency.

8. Equal Employment Opportunity. Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," 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."

9. Debarment. No part of the work shall be subcontracted to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." By signing this contract or performing this purchase order contractor certifies that neither it nor any of its principal employees is on this debarred list. Contractor shall require a similar certification from all firms awarded subcontracts over \$25,000.

10. Assignment/Subcontracting. AURA may assign its rights under this agreement to either the National Science Foundation or to an organization succeeding it as the operator of NOIRLab. Contractor shall not assign or delegate its rights/responsibilities under this agreement without prior written permission from AURA, and any assignment without such permission shall be void. Any assignment with AURA's permission shall not relieve contractor of responsibility for successful performance of the work. Contractor may not subcontract any portion of the work, not including purchases of commercially available items, without prior written permission from AURA.

11. Copeland Anti-Kickback Act. Contractors and subcontractors on public building or public work financed in whole or in Part by Loans or Grants from the United States in excess of \$2,000.00 shall comply 18 USC 874. The Act provides that each contractor or sub-recipient 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.

12. Contract Work Hours and Safety Standards Act. In performing the work contractor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week 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 1½ 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 provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

13. Nondiscrimination. This agreement is subject to the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the regulations issued pursuant thereto by NSF (45 CFR 611), and the Assurance of Compliance which the Contractor has filed with NSF. No person on the basis of race, color, national origin, or handicap shall be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under this agreement. In addition, if the project involves an education activity or program, as defined by Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1686), no person on the basis of sex shall be excluded from participation in the project.

14. Davis-Bacon, as amended (40 U.S.C. 276a to a-7) (applicable to contracts for construction exceeding \$2,000.): All purchase orders for construction shall comply with the provision titled "Davis-Bacon Act (40 U.S.C. 276A to a-7) and as supplemented by the Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, the contract shall be required to pay wages to labor and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Seller shall be required to pay wages not less than once a week. The Seller shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a subcontract or purchase order shall be conditioned upon the acceptance of the wage determination. The Seller shall report all suspected or reported violations to AURA.

15. Domestic preferences for procurements (CFR 200.322) "Build America, Buy America (BABA)" (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. Two General FATCs related to CFR 200.322 were added to the uniform guidance on October 4, 2021. These provisions are incorporated into this agreement in full text.

Domestic Preferences for Procurements

The awardee is notified of the applicability of 2 CFR §200.322, entitled Domestic Preferences for Procurements.

Made in America

In implementation of 2 CFR §200.322, Major Facility Construction Stage awards and Mid-Scale Research Infrastructure implementation awards greater than \$20 million must retain appropriate documentation to substantiate any circumstance where the awardee has deemed a U.S.

preference not feasible in acquiring goods, products, or materials. The documentation must identify the basis for the determination and be based on:

- a. Domestic non-availability – articles, materials, or supplies are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities and of a satisfactory quality to meet technical or operational requirements;
- b. Unreasonable cost – the price of the domestic end product (including transport to the construction site) is higher than the price of a foreign end product by 30 percent if offered by small business or 20 percent if offered by other than a small business;

- c. c. The purchase is related to commercially-available information technology; and/or
- d. d. The purchases are at or below the micro-purchase threshold (currently \$10,000 for most acquisitions), or related to procurements for use outside of the United States.

The requirements of this article must be included in all subawards, contracts and purchase orders for work or products under this award.

16. Contracting with Small and Minority Businesses and Women’s Business Enterprises. To the maximum extent practical, Contractor shall take affirmative steps to include small business concerns, and minority businesses, women owned business, and labor surplus area concerns as subcontractors. Contractor shall include a similar requirement in all subcontracts.

**APPENDIX 3
LOCAL REQUIREMENTS**

Contractor shall comply with the local requirements set forth in this Appendix 3. Provided for informational purposes, this list of local requirements is not intended to be an exhaustive list. Contractor is expected to have reasonable knowledge of local laws and requirements that may impact the Work.

Insert Tribal or Local Government requirements, or similar requirements. If there are local prevailing wage requirements, limitations on land use, etc., they could be inserted here.

**APPENDIX 4
PAYMENT SCHEDULE**

Consider:

- 1. Payments by phase of work, monthly, or otherwise.*
- 2. Whether the payment schedule is impacted by the fact that the agreement is (if it is) cost-reimbursement as opposed to fixed price.*
- 3. Holdbacks of any percentage (such as a 10% holdback for periodic payments as work is performed).*
- 4. Whether the payment schedule was part of what was requested in the proposal process.*

Insert clear payment terms here.

In drafting, ensure that you compare to/consider Article 4 (Payment) in the body of the Contract to avoid inconsistencies.