

2 AMENDMENT/MODIFICATION NO 0288
 3 EFFECTIVE DATE See Block 16C
 4 REQUISITION/PURCHASE REQ. NO
 5 PROJECT NO (If applicable)
 6 ISSUED BY CODE 05001
 7. ADMINISTERED BY (If other than item 5) CODE 05003

NSNSA/Contracts & Procurement Div.
 U.S. Department of Energy
 Contracts and Procurement Division
 P.O. Box 5400
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NNSA/Los Alamos Site Office
 U.S. Department of Energy
 Los Alamos Site Office
 3747 West Jemez Road
 Los Alamos NM 87544

8 NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)
 LOS ALAMOS NATIONAL SECURITY, LLC
 Attn: STEVE SHOOK
 P.O. BOX 1663, MS M722
 LOS ALAMOS NM 875450001

9A AMENDMENT OF SOLICITATION NO (x)
 9B DATED (SEE ITEM 11)
 10A MODIFICATION OF CONTRACT/ORDER NO X
 DE-AC52-06NA25396
 10B DATED (SEE ITEM 13)
 12/21/2005

CODE 175252894 FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended. is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12 ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE
 A THIS CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A
 B THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
 X C THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF Mutual Agreement of the Parties and P.L. 95-91 and other applicable laws
 D OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not is required to sign this document and return 1 copies to the issuing office

14 DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)
 See Page 2.

Period of Performance: 12/21/2005 to 09/30/2018

Except as provided herein, all terms and conditions of the document referenced in Item 9 A or 10A, as heretofore changed, remains unchanged and in full force and effect

15A NAME AND TITLE OF SIGNER (Type or print) Paul D. Henry Deputy Laboratory Director (Acting)
 16A NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Michael G. Loera
 15B CONTRACTOR REFERENCE NO [Redacted]
 15C DATE SIGNED 10/17/14
 16B UNITED STATES OF AMERICA [Redacted]
 16C DATE SIGNED 17 Oct 14

The purpose of this modification is to revise Section B, paragraphs B-1, "Services Being Acquired" and B-2, "Contract Type and Value," to provide MANAGEMENT AND OPERATION OF LANL and LANL DESIGN AND/OR CONSTRUCTION OF CAPITAL PROJECTS as separate Contract Line Item Numbers; and, to incorporate the Transuranic Waste Facility Project, Phase B Subproject, as an authorized Sub-Contract Line Item Number project.

- A. Section B, paragraph B-1, "Services Being Acquired," is replaced in its entirety to provide for the separation of services into two separate Contract Line Item Numbers (CLINs) as set forth below:

B-1 SERVICES BEING ACQUIRED

CLIN 0001 MANAGEMENT AND OPERATION OF LANL

The Offeror (also referred to herein as "Contractor") shall, in accordance with the terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to providing its best efforts to effectively, efficiently and safely manage and operate the Los Alamos National Laboratory (hereinafter "the Laboratory" or "LANL") for the U.S. Department of Energy (DOE) National Nuclear Security Administration (NNSA).

CLIN 0002 LANL DESIGN AND/OR CONSTRUCTION OF CAPITAL PROJECTS

The Contract modification recognizing CLIN 0002 will expire and become inoperative ninety (90) days after the Final Payment has been issued for the SUB-CLIN 0001 pilot project. If CLIN 0002 becomes inoperative, a bi-lateral modification will be executed that restores the original contract language, including the process for calculating fee, and returns the contract to a single line item (or CLIN 0001). If the parties wish to continue the use of CLIN 0002, a bi-lateral modification to that effect will be executed prior to its expiration.

When the parties agree that a capital project (project estimated to be greater than \$10 Million) will be performed pursuant to this CLIN, the Contractor shall, in accordance with the Statement of Work and all other applicable terms and conditions of this Contract, provide the personnel, equipment, materials, supplies, and services (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to effectively, efficiently, and safely, designing, executing and completing authorized design and/or construction of capital projects at LANL.

If the parties do not agree that a capital project will be performed pursuant to this CLIN 0002, such projects will be performed under CLIN 0001 terms and conditions.

All authorized projects covered under this CLIN 0002 will be individually identified as SUB-CLINs. Such projects shall be bilaterally negotiated, and will consist of, without limitation, a

detailed description of work, total project cost, delivery schedule (to include major milestones and/or completion date), reward/penalty structure and associated fee. The fee for each CLIN 0002 SUB-CLIN will be negotiated separately and not be duplicative of the CLIN 0001 "At Risk" and Fixed fee contained elsewhere within this Contract. Appropriate architect/engineering and construction terms and conditions necessary for the completion of a project and not otherwise contained under CLIN 0001, will be incorporated into the Contract through the CLIN 0002 and SUB-CLIN process and shall be applicable only to each individual SUB-CLIN. SUB-CLINS will only be considered when they have reached the Critical Decision-2/3 Phase as described within DOE Order 413.3B, "PROGRAM AND PROJECT MANAGEMENT FOR THE ACQUISITION OF CAPITAL ASSETS."

- B. Section B, paragraph B-2, "Contract Type and Value," is replaced in its entirety to provide for the separation of services into two separate CLINs; and, to add conditions related to the new CLIN 0002 structure as follows:

B-2 CONTRACT TYPE AND VALUE

I. CLIN 0001 MANAGEMENT AND OPERATION OF LANL

- (a) (1) This Contract is a Cost-Reimbursement Management and Operating (M&O) type contract that includes Fixed Fees and a Performance Incentive Fee for the Basic Term of the Contract and the Award Term earned periods. The aforementioned Fixed Fee and Performance Incentive Fee are exclusive of any Performance Based Incentive Fee or Firm-Fixed-Price identified under CLIN 0002 for design and or construction of capital projects.
- (2) All fee is associated with the DOE/NNSA work and Reimbursable work. DOE/NNSA work as used herein is the work performed by the Contractor that is funded out of the Laboratory's Table included in the President's annual budget request for LANL. Reimbursable work as used herein is the work performed by the Contractor that is not funded out of the Laboratory's Table included in the President's annual budget request for LANL.
- (b) Total Estimated Cost for the Contract's Transition Term.
- (1) The Total Estimated Cost for the Transition Term of the Contract is:
- | <u>Transition Term of the Contract</u> | <u>Total Estimated Cost</u> |
|--|-----------------------------|
| 01Dec05 – 31May06 | \$12,584,963.00 |
- (2) The Transition Term effort shall be performed on a Cost-Reimbursement, no fee basis.

(c) Total Estimated Cost, including Fee, for the Contract's Basic Term and earned Award Term related to the DOE/NNSA work effort, excluding Reimbursable work.

(1) (i) The Total Estimated Cost, including fee, for the DOE/NNSA work effort, excluding Reimbursable work, for the Basic Term of the Contract is:

<u>Basic Term of the Contract</u>	<u>Total Estimated Cost and Fee</u>
01Jun06 – 30Sep06	\$ 610,730,667
01Oct06 – 30Sep07	\$1,817,120,982
01Oct07 – 30Sep08	\$1,822,433,640

<u>Basic Term of the Contract</u>	<u>Total Estimated Cost and Fee</u>
01Oct08 – 30Sep09	*\$1,832,192,000
01Oct09 – 30Sep10	\$1,832,192,000
01Oct10 – 30Sep11	**\$1,832,192,000
01Oct11 – 30Sep12	**\$1,832,192,000
01Oct12 – 30Sep13	\$1,832,192,000

*Note: In FY2009 the total Congressional Appropriation was \$2,223,805,465. This exceeded the Total Estimated Cost and Fee by more than 10%. As a result the Maximum Available Fee increased in FY2009 by \$16,062,855. This amount was bilaterally agreed to be applied in FY2010 and FY2011 respectively.

**Note: In FY2011, the total Congressional Appropriation was \$2,242,783,930. This exceeded the Total Estimated Cost and Fee by more than 10%. As a result the Maximum Available Fee increased in FY2011 by \$15,395,584. It was bilaterally agreed to apply \$13,000,000 to FY2011 per Contract Modification #173 and to add the remaining \$2,395,584 to the FY2012 Maximum Available Fee pool.

(ii) The Total Estimated Cost, including fee, for the DOE/NNSA work effort, excluding Reimbursable work, for the earned Award Term of the Contract is:

<u>Award Term of the Contract</u>	<u>Total Estimated Cost and Fee</u>
01Oct13 – 30Sep14	\$1,962,384,000

(2) (i) The Maximum Available Fee related to the DOE/NNSA work effort, excluding Reimbursable work, for the Basic Term of the Contract is:

Basic Term Contract Period	Maximum Available Fee			Fixed Fee	Earned Fee	
	Fixed Fee	At Risk Fee	Total Fee		At Risk Fee	Total Fee Earned
01Jun06 – 30Sep06			\$17,788,272			\$17,788,272
01Oct06 – 30Sep07	\$21,984,000	\$51,296,000	\$73,280,000	\$21,984,004	\$36,224,982	\$58,208,986
01Oct07 – 30Sep08	\$21,984,000	\$51,296,000	\$73,280,000	\$21,984,000	\$41,537,640	\$63,521,640
01Oct08 – 30Sep09	\$21,984,000	\$51,296,000	\$73,280,000	\$21,984,000	\$43,263,531	\$65,247,531
01Oct09 – 30Sep10	\$23,329,285	\$54,435,000	*\$77,764,285	\$23,329,285	\$44,262,497	\$67,591,782
01Oct10 – 30Sep11	\$26,009,570	\$60,688,999	**\$86,698,569	\$26,009,570	\$50,140,626	\$76,150,196
01Oct11 – 30Sep12	\$19,954,675	\$46,560,909	***\$66,515,584	\$19,954,675	\$31,624,479	\$51,579,154
01Oct12 – 30Sep13	\$17,862,000	\$41,678,000	\$59,540,000	\$17,862,000	\$34,050,926	\$51,912,926

*Note: This amount is the sum of the original FY 10 fee (\$68,700,000), plus \$9,064,285 due to increase in Total Estimated Cost and Fee during FY 09.

**Note: This amount is the sum of the original FY 11 fee (\$68,700,000), plus \$6,998,570 due to increase in Total Estimated Cost and Fee during FY 09. Also note that the MAF was bilaterally reduced by \$2,000,000, for a future project resulting in \$73,698,570 MAF at the beginning of FY11. Contract Modification #173 added \$13,000,000 to the MAF due to an increase in Total Estimated Cost and Fee during FY11. It was bilaterally agreed that any additional FY11 fee adjustment (\$2,395,587) would be applied to the FY12 MAF in a future modification.

***Note: This amount is the sum of the original FY12 Fee (\$64,120,000), plus \$2,395,584, the final FY11 incremental fee greater than \$13,000,000, resulting in \$66,515,584 of Total Fee for FY2012.

- (ii) The Maximum Available Fee related to the DOE/NNSA work effort, excluding Reimbursable work, available to the CLIN 0001, for the earned Award Term of the Contract is identified in the table below. See paragraph (d) below for the calculation of the Maximum Available Fee.

Award Term Contract Period	Maximum Available Fee			Earned Fee		Total Fee Earned
	Fixed Fee	At Risk Fee	Total Fee	Fixed Fee	At Risk Fee	
01Oct13 – 30Sep14:	\$17,147,045	\$40,009,771	\$57,156,816	\$TBD*	\$TBD	\$TBD

*To be determined.

- (3) Since the Maximum Available Fee has been established, there will be no annual negotiation of the Maximum Available Fee. However, in the event the Congressional appropriation for a particular fiscal year deviates by more than (plus or minus) 10% from the Total Estimated Cost and Fee, the Contracting Officer shall unilaterally modify the Contract to adjust the Maximum Available Fee for DOE/NNSA related work amounts, except for Reimbursable work, utilizing the calculation method described below:

Annual Appropriation	X	Maximum Available Fee	=	Adjusted Maximum Available Fee for that Year.
Estimated Fee Base				

- (4) For the Fiscal Year (FY) 2006 period, the Maximum Available Fee shall be Fixed Fee. For FY 2007 through FY 2013, 30% of the Maximum Available Fee will be applied to Fixed Fee and 70% of the Maximum Available Fee will be applied to Performance Incentive Fee.
- (5) The Contractor shall review, near the end of every FY Quarter, the relevant Congressional appropriation and funds applied to this Contract for purposes of paragraphs (c)(3) and (d)(4) of this clause. The Contractor shall notify the Contracting Officer in writing within 10 business days following the end of each FY Quarter if the 10% threshold has been reached and adjustment in fee(s) is warranted.
 - (i) Upon Contracting Officer review and approval of the Contractor's written notification that the 10% threshold has been reached (plus or minus), the adjustment to fee(s) will be calculated by the Contracting Officer in accordance with the method described in either paragraph (c)(3) or paragraph (d)(4), as appropriate. The resultant calculation will be documented by an appropriate modification to the Contract.
 - (ii) If the total funding is expected to continue changing either positively or negatively, the parties may agree to defer calculation of the incremental fee change amount, but no beyond ten (10) business days following the close of the fiscal year. For (c)(3) only, any calculation delayed to the last quarter of the fiscal year may result in modification of the fee in accordance with paragraph (c)(6) below. Once the amount is calculated and the amount fixed in dollars, the parties will negotiate how to apply the change to either the current or future Performance Evaluation Plan(s) (PEP), as appropriate, though the Government retains the right, specified elsewhere in the Contract, to unilaterally modify the PEP, if required.
- (6) For any adjustment of the Maximum Available Fee made per paragraph (c)(3), the parties may mutually agree to defer the adjustment of the Maximum Available Fee, in part, or in whole, to a future year(s) in order to more readily align to the sequence of the funded work, avoid disruption of the indirect rate late in the fiscal year, or any other reason deemed by the parties to be reasonable and in concert with the effective execution of this Contract.
- (d) The Maximum Available Fee related to the DOE/NNSA work effort, excluding Reimbursable work and any Performance Based Incentive Fee or Firm-Fixed-Price available under CLIN 0001, for the Contract's Award Term period earned by the Contractor is:
 - (1) For the Award Term period specified in (d)(2) below, 30% of the Maximum Available Performance Incentive Fee will be applied to Fixed Fee and 70% of the Maximum Available Performance Incentive Fee will be applied to Performance Incentive Fee.

- (2) The Fixed Fee for each Award Term period earned by the Contractor related to the DOE/NNSA work effort, excluding for Reimbursable work, is 0.90% of the Total Estimated Cost. The Total Estimated Cost is the Laboratory Table amount included in the President's Budget request to Congress less the Line Item funding for SUB-CLIN projects (contained in details of the President's Budget), divided by 1.03.

<u>Contract Period</u>	<u>Total Estimated Cost</u>	<u>Fixed Fee</u>
01Oct13 – 30Sep14	\$1,905,227,184	\$17,147,045
01Oct14 – 30Sep15	\$1,857,223,301	\$16,715,010

- (3) The Maximum Available Performance Incentive Fee for each Award Term period earned by the Contractor related to the DOE/NNSA work effort, excluding Reimbursable work and any Performance Based Incentive Fee or Firm-Fixed-Price available under CLIN 0002, is 2.1% of the Total Estimated Cost. The Total Estimated Cost is the Laboratory Table amount included in the President's Budget request to Congress, less the Line Item funding for SUB-CLIN Projects (contained in details of the President's Budget), divided by 1.03. (FY07 fee can be found in Mod. M040).

<u>Contract Period</u>	<u>Total Estimated Cost</u>	<u>Maximum Available Performance Incentive Fee</u>
01Oct13 – 30Sep14	\$1,905,227,184	\$40,009,771
01Oct14 – 30Sep15	\$1,857,223,301	\$39,001,689

The sum of the Total Estimated Cost plus the Fixed Fee and Maximum Available Performance Incentive Fee is the total Laboratory Table amount.

- (4) In the event Congressional appropriation deviates by more than (plus or minus) 10% from the applicable fiscal year Laboratory Table in the President's Budget annual requests, less the Line Item funding for SUB-CLIN projects (contained in details of the President's Budget), the Contracting Officer shall unilaterally modify the Contract to adjust the Fixed Fee and Maximum Available Performance Incentive Fee for DOE/NNSA related work, except for Reimbursable work. The fee will be adjusted in proportion to the change between the President's Budget and the Congressional appropriation.

(c) Estimated Cost and Fee for Reimbursable Work.

- (1) The Fixed Fee for FY 2006 and each subsequent fiscal year during the Basic Term of the Contract and for each Award Term period earned by the Contractor, will be established by NNSA prior to the commencement of the applicable fiscal year and will be incorporated into paragraph (e)(2) below. The Fixed Fee for each fiscal year shall be 2.5% of the Estimated Cost of NNSA's total estimated budget for Reimbursable work.
- (2) The Estimated Cost and Fixed Fee related to the Reimbursable work effort for the specified period is:

Basic Term			Total Cost Plus
<u>Contract Period</u>	<u>Estimated Cost</u>	<u>Fixed Fee</u>	<u>Fixed Fee</u>
01Jun06 – 30Sep06	\$ 88,310,784	\$2,207,770	\$ 90,518,554
01Oct06 – 30Sep07	\$295,723,911	\$7,393,098	\$303,117,009
01Oct07 – 30Sep08	\$292,171,316	\$7,304,283	\$299,475,599
01Oct08 – 30Sep09	\$275,434,538	\$6,885,864	\$282,320,402
01Oct09 – 30Sep10	\$263,682,551	\$6,592,064	\$270,274,615
01Oct10 – 30Sep11	\$303,019,246	\$7,575,481	\$310,594,727
01Oct11 – 30Sep12	\$319,796,393	\$7,994,910	\$327,791,303
01Oct12 – 30Sep13	\$294,595,960	\$7,364,900	\$301,960,860
Award Term			Total Cost Plus
<u>Contract Period</u>	<u>Estimated Cost</u>	<u>Fixed Fee</u>	<u>Fixed Fee</u>
01Oct13 – 30Sep14	\$249,982,597	\$6,249,565	\$256,232,162
Future Fiscal Years*			

*To be determined.

- (f) Provisional Payment of Fee.
- (1) For the DOE/NNSA related work, except for Reimbursable work and any Performance Based Incentive Fee or Firm-Fixed-Price available under CLIN 0002, the Fixed Fee for FY 2006 for non-transition period related work performance shall be paid in equal monthly increments for the actual performance period where the Contractor is managing and operating the Laboratory. The Fixed Fee for FY 2007 and each subsequent fiscal year shall be paid monthly at the rate of one-twelfth (1/12) of the annual amount per month. Such payment amounts are to be drawn down by the Contractor from the Contract's special financial institution account in monthly installments on the last day of each month.
 - (2) (i) The Performance Incentive Fee for DOE/NNSA related work, except for Reimbursable work and any Performance Based Incentive Fee or Firm-Fixed-Price available under CLIN 0002, is authorized for draw down by the Contractor from the Contract's special financial institution account as follows:
 - (I) in monthly provisional fee payments equivalent to 3% of the Maximum Available Performance Incentive Fee, and
 - (II) the balance, if any, upon issuance of the Contracting Officer's notification in accordance with the Contract Clause H-14, "PERFORMANCE INCENTIVES."
 - (ii) If the provisional payments made in (2)(i) above exceed the Performance Incentive Fee earned determination, the Contractor shall remit any balance due payable to the Government in accordance with directions to be provided by the Contracting Officer.

- (3) The Fixed Fee for Reimbursable work for FY2011 and each subsequent fiscal year shall be paid in equal monthly increments at the rate of one-twelfth (1/12) of the annual amount per month.
- (g) Except for the condition identified in (c)(3) and (d)(4) above, there shall be no adjustment in the amount of the Contractor's fee by reason of differences between any estimate of cost for performance of the work under this Contract and the actual cost of performance of that work.
- (h) Pursuant to the Contract's Section I Clause I-134, "DEAR 970.5232-4 OBLIGATION OF FUNDS," the total amount obligated by the Government is identified in the latest funding modification.
- (i)
 - (1) If the Contractor is part of a teaming arrangement as described in Federal Acquisition Regulation (FAR) 9.601, the team shall share in the Fixed Fee and Performance Fee structure in paragraphs (c), (d) and (e) of this clause. Separate additional subcontractor fees for individual team members will not be considered an allowable cost under the Contract.
 - (2) If a subcontractor, supplier, or lower-tier subcontractor is a wholly owned, majority owned, or affiliate of any team member, any fee or profit paid to such entity will not be considered an allowable cost under this Contract unless otherwise approved by the Contracting Officer.

II. CLIN 0002 LANL DESIGN AND/OR CONSTRUCTION OF CAPITAL PROJECTS

- (a) Design and/or Construction efforts associated with a capital project are part of the scope of this Cost-Reimbursement M&O type contract and are funded out of the Laboratory's Table included in the President's annual budget request for LANL. Specifically, the funding for design and/or construction efforts associated with a capital project, including Performance Based Incentive Fee available under CLIN 0002, if any, is included in the Total Estimated Cost for the M&O Contract as noted in B-2 Contract Type and Value, CLIN 0001 Management and Operation (M&O) LANL, subparagraphs (d)(2) and (d)(3).
- (b) For Design and/or Construction projects described as SUB-CLINs, such projects shall be bilaterally negotiated, and identify the SUB-CLIN number, Project title, contract type (such as a Performance Based Incentive Fee or Firm-Fixed-Price), description of work, delivery schedule (to include major milestones and/or completion date), and associated terms and conditions necessary for the completion of a project and not otherwise contained in the Contract.
- (c) The cost and fee associated with CLIN 0002 shall be accounted for and reported separately and be completely severable from all other parts of this contract. The Contractor will follow its approved Disclosure Statement and Cost Model for charging costs to projects under CLIN 0002. The treatment of fee for projects under CLIN 0002

will be paid by project funds, and the Contractor will reflect this in its annual cost accounting Disclosure Statement.

- C. Section B, paragraph B-2, "Contract Type and Value," **II. CLIN 0002 LANL DESIGN AND/OR CONSTRUCTION OF CAPITAL PROJECTS** is revised as follows to add a new paragraph (d) that incorporates the Transuranic Waste Facility Project, Phase B Subproject as SUB-CLIN 0001.

(d) The following Capital Project is added as SUB-CLIN 0001:

1.0 SERVICES BEING ACQUIRED

The Contractor shall, in accordance with the terms and conditions of the Contract and terms and conditions contained in this SUB-CLIN 0001, provide the personnel, equipment, materials, supplies, and services, (except as may be furnished by the Government) and otherwise do all things necessary for, or incident to, effectively, efficiently and safely managing the design and construction of the Transuranic (TRU) Waste Facility Project, Phase B Subproject (Project) through achievement of Critical Decision-4 (CD-4) "Approve Start of Operations or Project Completion." The scope is as described in the Project's CD-3 Project Execution Plan, Revision 2 as it pertains to scope, and supporting CD-2 documentation.

2.0 CONTRACT TYPE, VALUE, FEE SCHEDULE AND PROJECT COMPLETION

- (a) This SUB-CLIN 0001 Project utilizes a Cost-Plus-Incentive-Fee type contract, whereby the Contractor can earn a positive or negative incentive fee based on cost achievement.
- (1) The Contractor shall complete work necessary on the TRU Waste Facility Project to achieve Critical Decision-4 (CD-4). The incentive portion of this work only applies to achievement of non-nuclear operations (Beneficial Occupancy) which is defined in the Transition to Operations Plan, Revision 2, dated June 2014, Document No. 102355-PLAN-00031. As described in Document No. 102355-PLAN-0003, "Beneficial Occupancy" includes check out and acceptance of electrical, mechanical, and fire systems as well as procedures and training for non-nuclear operations.
- (2) The achievement of CD-4 will be in accordance with DOE Order 413.3B and when all required actions are completed pursuant to both the Contractor's and DOE/NNSA's Operational Readiness Reviews. The Contractor's Operational Readiness Review is described in its Plan of Action, dated August 8, 2014, Document No. EP-TWF-PLAN-1257, R0, which is pending review and approval from the NNSA. The final phase of achieving nuclear operations through CD-4 places Contractor fee earned, if any, under achievement of non-nuclear Transition to Operations, at risk as described in SUB-CLIN 0001 Section 3.0, "INCENTIVE

FEE,” paragraph (g).

(b) The Project values shown below represent the current values as of the date of agreement of this modification:

(1) Phase B Subproject Scope through Beneficial Occupancy. The following values are associated with Phase B Subproject scope through Beneficial Occupancy.

Target Cost: \$82,000,000.

Target Maximum Fee (% of Target Cost): \$5,500,000 (6.7%).

Maximum Negative Value: \$4,000,000.

Target Fee (% of Target Cost): \$1,500,000 (1.83%).

The Target Completion date for achieving Beneficial Occupancy is July 7, 2016. The project completion date through achievement of CD-4 is January 31, 2018. For purposes of this incentive, the schedule as of August 2014 is the baseline schedule. All schedule float within the August 2014 baseline schedule is owned by the Contractor.

(2) Total Project Value through CD-4 Achievement.

(i) There is no additional fee associated with performance of the project scope Beneficial Occupancy through CD-4 achievement.

(ii) For the TRU Waste Facility Project, Phase B Subproject (both the Inception through Beneficial Occupancy scope, and Beneficial Occupancy through CD-4 scope), “Total Project Cost”, is \$97,291,000.

3.0 INCENTIVE FEE

(a) General. The Government shall pay the Contractor for performing this SUB-CLIN 0001 project scope through Beneficial Occupancy a fee determined as provided in this Section 3.0.

(b) Target Cost, Target Maximum Fee, Maximum Negative Value and Target Fee. The Target Cost, Target Maximum Fee, Maximum Negative Value and Target Fee specified in the Schedule are subject to adjustment if the Contract is modified in accordance with paragraph (d) of this clause.

(1) “Target Cost,” as used in this SUB-CLIN 0001, means the estimated cost of this SUB-CLIN 0001 as initially negotiated, adjusted in accordance with paragraph (d) below.

- (2) "Target Maximum Fee," as used in this SUB-CLIN 0001, means the maximum fee initially negotiated on the assumption that this SUB-CLIN 0001 will be performed for an actual cost less than the Target Cost. The fee earned is calculated by subtracting the actual cost from the Target Cost up to the limit defined by the Target Maximum Fee.
 - (3) "Maximum Negative Value," as used in this SUB-CLIN 0001, means the limit of the Contractor's financial liability where the actual cost exceeds the Target Cost, Target Fee is not earned, and costs continue to be incurred to achieve non-nuclear operations (Beneficial Occupancy) up to the Maximum Negative Value.
 - (4) "Target Fee", as used in this SUB-CLIN, means the fee negotiated on the assumption that this SUB-CLIN 0001 would be performed for a cost equal to the Target Cost, adjusted in accordance with paragraph (d) of this clause.
- (c) Provisional Payment of Cost and Incentive Fee.
- (1) Provisional payment of Contractor costs associated with this Project shall be made in accordance with the Contract's Clause I-132, "DEAR 970.5232-2 "PAYMENTS AND ADVANCES (DEC 2000) – ALTERNATE III (DEC 2000)."
 - (2) Provisional payment of the Project's Target Fee incentive fee, if earned, is payable up to the Target Maximum Fee incentive fee amount as specified in the Schedule.
 - (i) The provisional payment of the incentive fee earned, if any, shall be authorized by the Contracting Officer upon: (1) receipt of the signed declaration of transition to Facility Operations Director achievement, including the Contracting Officer's Representative acceptance; (2) validation of receipt of the Contractor's reported allowable costs incurred; (3) issuance of a letter to the Contractor authorizing the provisional payment; and (4) the provisional fee payment will become final within 30 days of receipt.
 - (ii) The amount of provisional incentive fee payment is to be drawn down by the Contractor from the Contract's special financial institution account in a lump sum payment on the last day of the month in which the Contracting Officer's letter authorizing the payment is issued. The parties recognize no adjustment will be made to the CLIN 0001 fee charged to, or credited to, associated with the SUB-CLIN 0001 project scope fee earned for the period FY 2006 through FY 2014.
- (d) Equitable adjustments. When the work under the SUB-CLIN 0001 scope is increased or decreased by a modification to this Contract or when any equitable adjustment in the Target Cost is authorized under any other clause, equitable adjustments in the Target Cost and changes to the fee amounts shall be negotiated separately for each equitable adjustment, and shall be stated in a Contract Modification.

(e) Fee payable.

- (1) (i) The fee payable under this SUB-CLIN 0001 shall be the Target Fee increased by 100 cents for every dollar that the total allowable cost is less than the Target Cost up to the Target Maximum Fee value; or,
 - (ii) Maximum Negative Value. Should the actual cost be greater than the sum of the Target Cost plus the Target Fee value, such actual costs are not reimbursable up to the Maximum Negative Value. The Maximum Negative Value will not be changed except by mutual agreement of the parties.
- (2) If this SUB-CLIN is terminated in its entirety, the portion of the Target Maximum Fee payable shall not be subject to an increase or decrease as provided in this paragraph. Instead, the termination shall be accomplished in accordance with other applicable clauses of this Contract.
- (3) For the purpose of determining fee earned, "Allowable Cost" shall not include costs arising out of --
 - (i) Any of the causes covered by the Contract Clause I-59, "FAR 52.249-14 "EXCUSABLE DELAYS (APR 1984)" to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;
 - (ii) The taking effect, after negotiating the Target Cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
 - (iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this Contract, including furnishing evidence and information requested pursuant to the Contract Clause I-90, "DEAR 970.5227-5 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT";
 - (iv) The purchase and maintenance of additional insurance not in the Target Cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons other than the Contractor's subcontractors;
 - (v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Contract Clause I-136, "DEAR 970.5245-1 "PROPERTY (DEC 2000) (ALTERATION)"; or
 - (vi) Any claim, loss, or damage resulting from a risk defined in the Contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.
 - (vii) Changes in the 9.25% General and Administrative rate, 43% estimated Regular Fringe rate, and 28% Student Fringe rate used to establish the estimate basis for

the Target Cost.

- (viii) The amount of CLIN 0001 fee charged to the Phase B Subproject for FY 2006 through FY 2013 has been estimated. The provisional FY 2014 fee charged to the Phase B Subproject has not been established and is pending NNSA's FY 2014 incentive fee determination. The estimated \$1,030,000 value of the CLIN 0001 fee charged from FY 2006 through FY 2014 was not included in the SUB-CLIN 0001 Target Cost basis for fee calculation purposes. When the NNSA's FY 2014 CLIN 0001 incentive fee determination is completed and the Contractor makes the final adjustment to the unearned CLIN 0001 FY 2014 fee, the parties will establish the final values of fee charged to the Phase B Subproject and exclude from the actual cost.
- (4) All other allowable costs are included in "Allowable Cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this Contract.
- (f) Contract modification. The Allowable Cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this Contract signed by the Contractor and Contracting Officer.
- (g) The Contractor will assume responsibility for costs incurred above the approved Total Project Cost up to the fee earned in achievement of the Beneficial Occupancy.
 - (1) Should the Phase B Subproject's actual cost, from inception through the final phase of achieving nuclear operations (CD-4 approval), be greater than the Total Project Cost value, such actual costs greater than the Total Project Cost value are not reimbursable up to value of the Contractor's fee earned in achievement of the non-nuclear operations (Beneficial Occupancy).
 - (2) If no fee was earned in achieving Beneficial Occupancy, this paragraph (g) is void.

4.0 PROJECT FUNDING

- (a) Incremental funding amounts have been obligated in prior and current fiscal year consistent with the Contract Clauses I-113, "FAR 52.232-18 AVAILABILITY OF FUNDS (APR 1984)" and I-134, "DEAR 970.52-32-4 OBLIGATION OF FUNDS (DEC 2000)." Future funding required to support this Project is conditioned upon receipt of congressionally appropriated funds to perform this work. If incremental funding is not sufficient to support the project schedule, an equitable adjustment in accordance with the SUB-CLIN 0001 Section 13.0, "FAR 52.243-2 CHANGES—COST-REIMBURSEMENT (AUG 1987) ALTERNATE III (APR 1984) (DEVIATION)" may be warranted.

- (b) The Contractor shall notify the Contracting Officer in writing within 30 calendar days whenever the Contractor has reason to believe that—
 - (i) The estimated Allowable Costs, when added to all Allowable Costs previously incurred, will exceed 75 percent of the Project's Target Cost; and
 - (ii) The Estimate at Completion will be greater than 75% of the sum of the Target Cost plus the Maximum Negative Value.
- (c) The Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this Project within 10 calendar days of submission of the Contractors notification in (b) above
- (d) Except as required by other provisions of this Contract, specifically citing and stated to be an exception to this clause—
 - (1) The Government is obligated to reimburse the Contractor for costs incurred in excess of the Project's Target Cost and Maximum Negative Value up to the Total Project Cost; and
 - (2) The Contractor is not obligated to continue Project performance (including actions under the Contract Clause I-115, "FAR 52.296-6 TERMINATION (COST REIMBURSEMENT) (MAY 2004) (ALTERATION)") or otherwise incur costs in excess of the obligated funding for the Project.
- (e) No notice, communication, or representation in any form other than that specified in paragraph (d)(2) of this clause, or from any person other than the Contracting Officer, shall affect the Government's portion of the Project's Target Cost. In the absence of the paragraph (d)(2) notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the obligated funding, whether those excess costs were incurred during the course of the Project or as a result of termination.
- (f) If the Project's Target Cost is increased, any costs the Contractor incurs before the increase that are in excess of the original Target Cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

5.0 REPORTING REQUIREMENTS

- (a) The Contractor shall provide reports or briefing material required by the associated DOE Orders and other terms and conditions, which are part of this Contract and applicable to this Project, to the Contracting Officer's Representative and Contracting Officer.
- (b) The Contractor shall maintain a detailed Critical Path Method schedule for completion of the Project. The Contractor shall provide access to or provide a copy of the monthly

schedule submittal to the Contracting Officer and Contracting Officer's Representative.

6.0 APPLICABLE REQUIREMENTS DOCUMENTS

(Reserved)

7.0 GOVERNMENT FURNISHED SERVICES/ITEMS

(Reserved)

8.0 PARENT ORGANIZATION LABORATORY SUPPORT

- (a) (1) In addition to the experts that may be provided under Contract Clause H-8, "UTILIZATION OF PARENT ORGANIZATION SUPPORT", the Contractor is permitted to utilize Parent Organization personnel as "seconded employees" on this Project within the SUB-CLIN 0001's Target Cost value, for the purpose of performing incidental work under this Contract, and such reasonable, allowable and allocable costs are permitted subject to the conditions contained in Contract Clause I-132, "DEAR 970.5232-2 PAYMENTS AND ADVANCES (DEC 2000) -- ALTNERANTE III (DEC 2000)." Reimbursement for parent company seconded employees' applicable direct and indirect costs are authorized in accordance with the government-approved costing practices of the "seconded employee's" regular work location, excluding fee. Time worked under this SUB-CLIN 0001 for such seconded employees will include the time spent by the employee enroute to and returning from the worksite on the first and last day of such work. Reasonable, allowable and allocable travel costs of such seconded employees will be allowed to the extent that they comply with the Contractor's regular travel policies under this Contract. As required by the Contracting Officer, the Contractor will provide a report of all Parent Organization Laboratory Support and costs incurred associated with this Project. Such Parent Organization personnel support is not considered a "Subcontract" as contemplated by the Contract Clause I-135, "DEAR 970.5244-1 CONTRACTOR PURCHASING SYSTEM (DEC 2000) (DEVIATION)."
- (2) Any parent company support provided under Contract Clause H-6 "PARENT ORGANIZATION'S OVERSIGHT PLAN" of CLIN 0001 is separate from, and not included in, this SUB-CLIN 0001 Section 8.0 "PARENT ORGANIZATION LABORATORY SUPPORT" clause.
- (b) A notification of the Contractor purchases of such services for this Project will be provided to the Contracting Officer; however, Contracting Officer approval is not required to obtain the parent company resources for this Project.
- (c) At the point of reaching the Maximum Negative Value, this SUB-CLIN 0001 Section 8.0 "PARENT ORGANIZATION LABORATORY SUPPORT" becomes void. The

Contractor's continued use of Parent Organization Laboratory Support, if needed, will be in accordance with the Contract Clause H-8, "UTILIZATION OF PARENT ORGANIZATION SUPPORT."

9.0 RESERVED

10.0 NNSA TECHNICAL REQUIREMENTS APPLICABLE TO THE PROJECT

(Reserved)

11.0 CONDITIONS AFFECTING THE WORK

- (a) NNSA and the Contractor agree that construction of the Project is a cooperative effort where maximum flexibility and control of the work must be given to the Contractor while NNSA objectively measures performance results.
- (b) Both parties desire to minimize contract changes wherever possible. However, it is recognized that certain specific events may constitute a basis for an equitable adjustment in the Target Cost and Schedule, in accordance with the SUB-CLIN 0001 Section 13.0, "FAR 52.243-2 CHANGES-COST REIMBURSEMENT (AUG 1987) ALTERNATE III (APR 1984) (DEVIATION)." Identified below are some of the events which could occur that may require an equitable adjustment. Also identified are some events which the parties agree shall not constitute a basis for an equitable adjustment. These examples are not meant to be a complete listing of all possible events. In addition, while an event may be a basis for a change, it may or may not result in an equitable adjustment to this Contract.
- (1) Events Beyond Contractor Control that may be a basis for change such as:
- NNSA directed new work;
 - A balance of \$60,000 remains in the baseline estimate for project costs incurred as part of DOE reviews (i.e. Defense Nuclear Facilities Safety Board, Office of Acquisition and Project Management, etc. Once the allowance is exhausted, any additional costs associated for reviews will be considered a Change.
 - Changes resulting from new regulatory requirements, Lawsuits [third party interveners], and other oversight organizations i.e., Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security, etc. as directed by the Contracting Officer or Contracting Officer's Representative; any change in the approved Safety Evaluation Report and Preliminary Documented Safety Analysis approved on March 18, 2014.
 - New DOE Orders or changes in existing DOE Orders.
 - Delays beyond the number of days included in the August 2014 Baseline Schedule for Regulatory Agencies reviews and/or required approvals. All time requirements for DOE approvals are contingent upon the document submitted by

the Contractor for approval being complete, accurate, and adequate in content and quality. If the Contractor's submittal does not meet these requirements, the original schedule for Regulatory Agencies is restored and reset, starting with the Contractor's date of resubmittal.

- (2) Events for which the Contractor is Accountable and that may not provide the basis for a change:
- Environment, Safety, & Health Violations or accidents caused by the Contractor or subcontractor(s), including work stoppage, consequential investigations and impacts;
 - Fines and penalties imposed by any other regulatory agency, if it is the result of Contractor or subcontractor misconduct;
 - Variances between actual quantities incurred versus quantities estimated; unless caused by factors beyond Contractor's control;
 - Omissions of required work in estimate; and
 - Events caused by the Contractor and/or its subcontractor(s), or which are within the Contractor's/subcontractor's control.
- (c) (1) With regard to differing site conditions, the parties also recognize that the completed TRU Waste Facility Project, Phase A Subproject activities, which included but were not limited to subsurface excavation, have already disturbed the Phase B Subproject construction site. Thus, if unknown latent physical conditions are found at the site that are not associated with Phase A Subproject activities at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in Phase B Subproject work, the Contractor shall promptly, and before the conditions are further disturbed, provide a written notice to the Contracting Officer.
- (2) The Contracting Officer and/or the Contracting Officer's Representative shall investigate the site conditions promptly after receiving such a Contractor notice. If the conditions materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Phase B Subproject work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this Section and the Phase B Subproject's Target Cost shall be modified in writing accordingly.
- (3) No request by the Contractor for an equitable adjustment to the Phase B Subproject's Target Cost for differing site conditions shall be allowed if made after final payment under this SUB-CLIN 0001.

12.0 FAR 52.243-7 NOTIFICATION OF CHANGES (APR 1984)

- (a) Definitions. "Contracting Officer," as used in this clause, does not include any representative of the Contracting Officer.

“Specifically Authorized Representative (SAR),” as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this subparagraph and shall be issued to the designated representative before the SAR exercises such authority.

- (b) Notice. The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within 30 calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state --
- (1) The date, nature, and circumstances of the conduct regarded as a change;
 - (2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;
 - (3) The identification of any documents and the substance of any oral communication involved in such conduct;
 - (4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
 - (5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including --
 - (i) What contract line items have been or may be affected by the alleged change;
 - (ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
 - (iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
 - (iv) What adjustments to the Project’s Target Cost, delivery schedule, and other provisions affected by the alleged change are estimated; and
 - (6) The Contractor’s estimate of the time by which the Government must respond to the Contractor’s notice to minimize cost, delay or disruption of performance.

- (c) Continued performance. Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.
- (d) Government response. The Contracting Officer shall promptly, within 30 calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either --
- (1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;
 - (2) Countermand any communication regarded as a change;
 - (3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or
 - (4) In the event the Contractor's notice information is inadequate to make a decision under subparagraphs (d) (1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.
- (e) Equitable adjustments.
- (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made --
 - (i) In the Project's Target Cost or delivery schedule or both; and
 - (ii) In such other provisions of the contract as may be affected.
 - (2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay

reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

13.0 FAR 52.243-2 CHANGES—COST-REIMBURSEMENT (AUG 1987) ALTERNATE III (APR 1984) (DEVIATION)

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in the plans and specifications or instructions incorporated in the contract.
- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the—
 - (1) Estimated cost, delivery or completion schedule, or both;
 - (2) Amount of any fixed fee; and
 - (3) Other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.
- (d) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.
- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) of this clause, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Contract Clause, I-113 FAR 52.232-18 "AVAILABILITY OF FUNDS OR OBLIGATION."

14.0 ALTERNATE DISPUTE RESOLUTION

(a) (1) NNSA and the Contractor both recognize that methods for fair and efficient dispute resolution are essential to the successful completion of the Transuranic Waste Facility Project, Phase B Subproject by the Target Completion Date and for the Target Cost identified in Section B of this contract. To facilitate the early resolution of disputes, the parties agree to elevate issues to the LANS and NNSA senior management. After exhausting the Contractor and NNSA internal efforts to resolve issues through senior management, the Contractor may elect to pursue resolution under this clause. If resolution cannot be achieved, the parties agree to the Alternative Dispute Resolution (ADR) provisions described below.

(2) Standing Neutral

The parties agree to jointly select a "Standing Neutral" to be available to help resolve disputes as soon as they arise. This can be an individual or a company with specific expertise in this area. If a Standing Neutral cannot be agreed upon, the DOE Office of Dispute Resolution will assist the parties in this selection.

(b) Early Resolution of Disputes

(1) The NNSA and Contractor shall use their best efforts to informally resolve any dispute, claim, question or disagreement, by consulting and negotiating with each other in good faith, recognizing their mutual interests, and attempting to reach a just and equitable solution satisfactory to both parties. If an agreement cannot be reached through informal negotiations, then such disagreement shall be referred to the "Standing Neutral," pursuant to the procedures that are jointly developed.

(2) The NNSA and Contractor, if mutually agreed upon, may pursue a non-binding advisory opinion from the Standing Neutral. If the Standing Neutral offers a non-binding advisory opinion, it shall not be admissible in evidence to any subsequent proceeding. Reasonable, allowable and allocable costs incurred by the Contractor in connection with the "Standing Neutral" administrative proceeding shall be reimbursable under this contract.

(3) The NNSA and Contractor, if mutually agreed upon, may pursue a binding decision from the Standing Neutral. Such a binding decision shall be acted upon to resolve the dispute. Reasonable, allowable and allocable costs incurred by the Contractor in connection with the "Standing Neutral" administrative proceeding shall be reimbursable under this contract.

(c) Formal Complaint. If the dispute has not been resolved through the "Standing Neutral" process, either party may request resolution under Contract Clause I-47, FAR 52.233-1 "DISPUTES (JUL 2002) (ALTERNATE I) (DEC 1991)."

D. Section H is revised as to add the following new Section H Clause H-44:

H-44 ADVANCE UNDERSTANDING ON LANL DESIGN AND/OR
CONSTRUCTION CAPITAL PROJECTS

- (a) In response to a DOE initiative to improve the management and structure of capital asset projects under Management and Operating type contracts, the parties have agreed to implement a pilot project to establish new terms and conditions associated with design and/or construction of one or more projects performed at LANL. This pilot project involves establishing a new Contract Line Item Number (CLIN) structure to separate agreed Design and/Construction scope (CLIN 0002) from the Management and Operations of LANL scope (CLIN 0001), as well as developing unique terms and conditions associated with performance of the capital asset pilot project. These unique terms and conditions include implementing a Hard Cost Cap or Cost Share Approach on the selected capital asset pilot project whereby if the Contractor does not meet performance targets, the cost cap or cost share will shift some cost burden to the Contractor. In consideration, a new fee structure will reward Contractor performance to meet or exceed performance targets.
- (b) The parties have selected the design and construction of the Transuranic (TRU) Waste Facility Project, Phase B Subproject as the pilot project and designated as SUB-CLIN 0001 under CLIN 0002. The design of this Phase B Subproject has been completed and construction is underway, having achieved Critical Decision -3 "Approve Start of Construction/Execution" in mid-July 2014.
- (c) The adjustments to the Contract's terms and conditions and the new unique terms and conditions to implement this pilot project are contained in this Contract Modification No. 0288.
- (d) The parties recognize conflicts in terms and conditions between CLIN 0001 and CLIN 0002's SUB-CLIN 0001 and other sections of the Contract may arise. If such conflicts arise, the parties agree to negotiate in good faith to resolve them, and update this Section H clause accordingly; or, utilize the Contract Clause I-47, FAR 52.233-1 "DISPUTES (JULY 2002) (ALTERNATE I) (DEC 1991)."
- (e) For purposes of this pilot project, the parties agree as follows:
 - (1) The Fiscal Year 2014 Performance Evaluation Plan and associated maximum available fee which may be associated with the Transuranic Waste Facility Project, Phase B Subproject remains unchanged and is pending NNSA's FY 2014 incentive fee determination. Commencing in Fiscal Year 2015 and beyond, the performance of CLIN 0002 SUB-CLIN 0001 pilot project shall not be considered by NNSA in assessing performance or in determining Performance Incentive Fee under the Performance Evaluation Plans (pursuant to Contract Clause H-12,

“PERFORMANCE BASED MANAGEMENT”) for CLIN 0001 or in determining whether to grant the Contractor Award Term (pursuant to Contract Clause H-13 AWARD TERM) for the FY2015 performance evaluation period, and beyond.

- (2) The CLIN 0002 SUB-CLIN 0001 pilot project shall not be included in the Fiscal Year 2015 and future Fiscal Years Performance Appraisal Process established under Contract Clause H-12, “PERFORMANCE BASED MANAGEMENT.”
- (3) Fee earned under CLIN 0002 shall not be reduced under Contract Clause I-124, “DEAR 970.5215-3 CONDITIONAL PAYMENT OF FEE, PROFIT AND INCENTIVES – FACILITIES MANAGEMENT CONTRACTS (JAN 2004) (DEVIATION),” for any safety or security incident not related to performance of the specific project defined in the SUB-CLIN.
- (4) Performance under CLIN 0002 may be input to the Contractor Performance Assessment Reporting System (CPARs).
- (5) The CLIN 0001’s Total Estimated Cost, Fixed Fee and Maximum Available Performance Incentive Fee for Fiscal Years 2015 and beyond, shall exclude CLIN 0002 SUB-CLINs’ Line Item Funding (contained in the President’s Budget). [Reference B-2, I. CLIN 001 (d)(2)) and (d)(3)]
- (6) The CLIN 0001’s proportional change (more than (plus or minus) 10%) between the President’s Budget and the Congressional appropriation does not apply to CLIN 0002 SUB-CLINs. [Reference B-2, I. CLIN 001 (d)(4)]
- (7) The CLIN 0001’s Provisional Payment of Fee drawdown condition does not apply to CLIN 0002 SUB-CLINs. [Reference B-2, I. CLIN 001 (f)(2)(i)]
- (8) The Contract Clause I-103, “970.5243-1 -- CHANGES (DEC 2000)” does not apply to CLIN 0002 SUB-CLIN 0001.