

**This is a model. Some or all of the provisions may need to be negotiated.
Before the final printing, the highlighting must be reversed.**

Subaward Number _____

SUBAWARD BETWEEN

New Mexico Institute of Mining and Technology

and

[Insert Subrecipient Legal Name Here]

THIS AGREEMENT is made and entered into between New Mexico Institute of Mining and Technology (hereinafter called the "Sponsor") and [Insert Subrecipient Legal Name Here] (hereinafter called "Subrecipient"). This agreement sets forth the terms for performance and administration of work under the prime agreement and may consist of:

- Subcontract Instrument
- Exhibit A – Statement of Work and Budget
- Exhibit B – Prime Agreement
- Exhibit C – Vendor Registration Form
- Exhibit D – Reporting Requirements
- Exhibit E – Certificate of Current Cost or Pricing Data
- Exhibit F – FFATA Form

Article I - Statement of Work and Subrecipient Key Personnel

[Insert Subrecipient Legal Name Here, DUNS number XXX] will act as a subrecipient in the project entitled [Insert Federal Award Project Title Here] awarded to Sponsor by [Insert Funding Agency, the prime award number, award issue date, and total amount of the award, CFDA No. xxxx and CFDA Title. This award[is or ___is not] R & D. The Subrecipient's effort is outlined in Exhibit A.

Key personnel for Subrecipient shall be [Dr. Joe Smith]. If for any reason, [Dr. Smith] is unable to continue to serve as project director, and a successor acceptable to Sponsor as approved in writing is not available, this agreement shall terminate as provided in Article XVIII.

Article II – Subrecipient Status

It is understood that Subrecipient executes this agreement as an independent contractor/corporation, and is not an employee of the Sponsor and is responsible for any applicable state or federal taxes. (Form 1099 Nonemployee Compensation will be issued for any payments made.)

Article III - Sponsor's Commitments

It is understood and agreed that the Sponsor will pay the cost of the project which will not exceed \$17,333.33 per month for July 1, 1998 and \$13,166.67 per month for July 1, 1999 to June 30, 2000 contingent upon funding.

Article IV - Payment

The Sponsor will pay Subrecipient the amount shown in Article III for performance of the Statement of Work, in accordance with mutually agreed upon milestones (Exhibit A). Subrecipient shall submit **monthly invoices**. Invoices are to be submitted to apinvoice@admin.nmt.edu. Alternatively, invoices may be sent to the following address for approval and payment:

New Mexico Institute of Mining and Technology
ATTN: Accounts Payable
801 Leroy Place
Socorro, NM 87801-4796

To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

- Name of Business and Invoice Date
- Invoice Number
- Purchase Order Number (Same as subaward number)
- Dates covered by the invoice
- Expenditure details that match line items of proposal including Labor Categories (hours and dollars), Travel, Materials, Other Direct Costs, etc. including receipts in each category of cost (**receipts if required by prime**)
- Current, Cumulative Expenditures
- Cost share, if proposed, current, cumulative
- In-kind cost share provided by a third party must include substantive documentation such as published rate schedules, time cards for volunteers, etc., and signed by the Chief Financial Officer or equivalent.
- Subaward Amount
- Certification of accuracy of invoiced amounts*
- Name and signature of authorized subrecipient representative
- Complete mailing address for processing payment

*Suggested Certification: "I certify to the best of my knowledge and belief that the billed costs or disbursements are in accordance with the terms and conditions of the Subaward Agreement and that payment is due and has not been previously requested."

For invoices, which contain equipment purchases greater than \$5,000 and/or Government

Furnished Property, [Insert Subrecipient Name Here] will submit an interim and a final property list to:

New Mexico Institute of Mining and Technology
Sponsored Projects Administration
ATTN: _____, Subaward Administrator
801 Leroy Place
Socorro, NM 87801

It is understood and agreed that Subrecipient's work under this agreement is made pursuant to a subaward agreement between the Sponsor and [Insert Prime Agency name, award number, and CFDA No. xxxx]. Notwithstanding any provision in this subcontract, the Sponsor's obligation to pay Subrecipient shall apply only upon payment to the Sponsor of Sponsor's statement encompassing work also performed by the Sponsor. In the event that any payments to Subrecipient under this subcontract are subsequently disallowed, Subrecipient shall on demand repay the Sponsor the amount of such disallowed item, or at the discretion of the Sponsor, such amounts may be deducted from subsequent payments to Subrecipient.

Requests for payment may be withheld if, in the opinion of Sponsor satisfactory progress on the project has not been accomplished or proper documentation has not been submitted. In such cases, Sponsor shall direct necessary remedial action, and payment requests shall be processed when Sponsor determines that such remedial action has been taken by Subrecipient.

The final invoice, clearly marked as final, must be submitted no later than 30 days following the termination date of this agreement for inclusion in Sponsor's financial status report to funding agency.

NMIMT shall not be obligated to pay invoices submitted after the 30-day period. In addition, 15% of the award amount may be withheld until all deliverables (financial and technical) have been satisfied.

Article V – Point of Contact

New Mexico Institute of Mining and Technology (Sponsor)

Technical

John Jones
New Mexico Tech
801 Leroy Place
Socorro, NM 87801
Ph: 575-835-5555
Fx: 575-835-5555

Administrative/Financial

Joe Anybody
New Mexico Tech
801 Leroy Place
Socorro, NM 87801
Ph: 575-835-5555
Fx: 575-835-5555

[Insert Subrecipient Name Here] (Subrecipient)

Technical

Administrative/Financial

John Smith

Jane Doe

[Insert Company Name Here]

[Insert Company Name Here]

1234 Anystreet

1234 Anystreet

Anycity, AS 12345

Anycity, AS 12345

999-999-9999

999-999-9999

Article VI – Subrecipient’s Commitments

The cost of the research under Article III will not be exceeded without specific written authorization or modification of the level of effort, as outlined in Exhibit A, to take into account new conditions.

Article VII – Audit Requirements and Records Examination

Subrecipient agrees to retain all financial records, supporting documents, statistical records, and all other records pertinent to this Agreement for a minimum of three years from the date of the Sponsor’s submission of the final expenditure report.

The retention period will be extended if litigation, claim or audit commences prior to the expiration of the three-year period, in which case the records must be kept until all litigation, claims, or audit findings involving the records are resolved.

Subrecipient agrees to comply with the requirements of 2 CFR 200, FAR 52.215-2 or other applicable regulations that ensure proper expenditure of federal funds. Upon Sponsor’s request a copy of the Subrecipient’s most recently released financial statement and independent audit shall be provided, including “Findings and Recommendations”, along with the executed copy of this instrument.

In the absence of such an audit, Sponsor may employ other means (such as performance reviews) to ensure the Subrecipient’s compliance with applicable Federal laws and regulations. If Sponsor’s review of the Subrecipient’s audit report detects instances of noncompliance with Federal laws and regulations, Sponsor will notify the Subrecipient that appropriate corrective action must be taken within six months. Failure to make progress toward such corrective action may result in the suspension of termination of this agreement, as well as the return of expenses reimbursed to that point in the subcontract period.

The Subrecipient agrees that Sponsor and/or the Federal Government or any of their duly authorized representatives shall have access to and the right to inspect or audit any directly pertinent books, documents, papers and records of the Subrecipient involving transactions related to this agreement and/or to ensure compliance with the terms and conditions of this Article.

Article VIII – Disallowed Costs

Subrecipient shall promptly reimburse Sponsor for any amounts for which Subrecipient cannot provide adequate documentation or substantiation or are otherwise unallowable or not properly chargeable as determined by the funding agency or an authorized agency rule through audit exception or some other appropriate means.

Article XIX - Data, Patents, and Copyrights

Inventions and patents which are developed under this Subcontract shall be administered in accordance with 37 CFR Part 401, “Rights to Inventions made by nonprofit organizations and small business firms under Government Grants, Contracts and Cooperative Agreements.” Subrecipient agrees that it shall grant to the Federal Government and others acting on its behalf, a royalty-free, non-exclusive, irrevocable, worldwide license to exercise all of the exclusive rights provided by copyright and to practice any subject inventions on behalf of the United States.

In the case of collaborative discoveries involving Sponsor employees, patent rights shall be jointly owned by Sponsor and Subrecipient.

Rights in inventions and other intellectual property predating this Agreement shall be the exclusive property of the Party who owns the rights. The Parties agree to abide by provisions in the Prime Award that may require the parties to grant license or other rights in the invention and associated data to the Government.

NOTE: The above verbiage should be used on agreements made pursuant to a Federal agreement. Where subawards are made pursuant to non-federal agreement the following verbiage should be incorporated.

A. Definitions

1. “Computer software” means computer programs, source code, source code listings, object code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the software to be reproduced, recreated, or recompiled.
2. “Subrecipient” means the entity or person who is contracting with Sponsor under this subaward.
3. “Data means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.
4. “Invention” means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

5. “Subject invention” means any invention of the subrecipient conceived or first actually reduced to practice in the performance of work under this contract.
6. “Technical data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.
7. “Unlimited rights” means rights to use, modify, reproduce, perform, display, release, or disclose data or a work in whole or in part, in any manner, and for any purpose whatsoever, and to have or authorize others to do so.
8. “Works” means computer data bases, computer software, or computer software documentation: literary, musical, choreographic or dramatic compositions; pantomimes; pictorial, graphic or sculptural compositions; motion pictures and other audiovisual compositions; sound recordings in any medium; or, items of similar nature.

B. Data

1. Grant of unlimited rights. Sponsor shall have unlimited rights in data that are
 - a. Data pertaining to an item, component, or process which has been or will be developed exclusively with Sponsor funds;
 - b. Studies, analyses, test data, or similar data produced for this contract, when the study, analysis, test, or similar work was specified as an element of performance;
 - c. Created exclusively with Sponsor funds in the performance of a contract that does not require the development, manufacture, construction, or production of items, components, or processes;
 - d. Data that describes the required overall physical, functional, and performance characteristics of an item, component, or process to the extent necessary to permit identification of physically and functionally interchangeable items;
 - e. Necessary for installation, operation, maintenance, or training purposes (other than detailed manufacturing or process data);
 - f. Corrections or changes to data furnished to the Subrecipient by Sponsor;
 - g. Otherwise publicly available or have been released or disclosed by the subrecipient or its subrecipient without restrictions of further use, release or disclosure, other than a release or disclosure resulting from the sale, transfer, or other assignment of interest in the data to another party or the sale or transfer of some or all of a business entity or

its assets to another party; or

- h. Data in which Sponsor has obtained unlimited rights under another Sponsor contractor as a result of negotiations.
2. Mixed funding. Rights in data created with funds from both Sponsor and the Subrecipient and not otherwise within the scope of paragraph B1 above, shall be allocated by means of good faith negotiations between the parties.
3. Mix of funding and expertise. Rights in data created with funds solely from the Subrecipient but where the expertise of employees of Sponsor is used in the creation of data shall be allocated by means of good faith negotiations between the parties.

C. Patents

1. Rights to subject inventions.
 - a. The Subrecipient agrees to assign to Sponsor the entire right, title, and interest throughout the world in and to each subject invention covered by Section B 1. a-h, inclusive.
 - b. The Subrecipient agrees to assign to Sponsor that portion of the entire right, title and interest throughout the world which is agreed to between the parties as to any data created by mixed funding or by mix of funding and Sponsor expertise.
2. Invention disclosure. The Subrecipient shall disclose each subject invention to Sponsor within six months after the subrecipient becomes aware that a subject invention has been made.

D. Copyrights

1. Applicability. This section applies to data and works first created, generated, or produced and required to be delivered under this contract.
2. License rights.
 - a. Sponsor shall have unlimited rights in data and works first produced, created, or generated and required to be delivered under this contract.
 - b. When data or a work is first produced, created, or generated under this contract, and such data or work is required to be delivered under this contract, the Subrecipient shall assign copyright in those data or works to Sponsor.
 - c. The Subrecipient grants to Sponsor a royalty-free, world-wide, non-exclusive, irrevocable license to reproduce, prepare derivative works from, distribute, perform,

or display, and to have or authorize others to do so, the Subrecipient's copyrighted data and works not first produced, created, or generated under this contract that have been incorporated into the works deliverable under this contract.

Article X – Term

It is understood and agreed that the period for this project will continue from July 1, 1998 through June 30, 2000 dependent upon continued project funding.

Article XI- Acknowledgment of Support and Disclaimer

Subrecipient agrees to include a disclaimer and an acknowledgment of Sponsor /prime award in any publication of any material, whether copyrighted or not, based on or developed under this Agreement, as follows:

“This material is based upon work supported by the Funding Agency plus their award number for identification purposes and if appropriate to have this disclosure statement.”

Subrecipient agrees to include the following disclaimer on all materials, except scientific articles or papers published in scientific journals:

“Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of Sponsor or Funding Agency.”

Article XII- Confidentiality

During the performance of the agreement, it may be necessary for the Sponsor to disclose to Subrecipient information which the Sponsor regards as confidential and/or proprietary. Sponsor shall identify, in writing, such information as confidential and/or proprietary. Subrecipient shall use reasonable efforts to maintain such information in confidence and will employ reasonable and appropriate procedures to prevent its unauthorized publication or disclosure. Subrecipient will not use Sponsor proprietary or confidential information for any purpose other than in the performance of the agreement. The obligations of the confidentiality set forth in this paragraph shall survive termination or expiration of this agreement for a period of five (5) years unless otherwise agreed by the parties.

During the performance of the agreement, it may be necessary for Subrecipient to disclose to the Sponsor information which Subrecipient regards as confidential and/or proprietary. Subrecipient shall identify in writing, such information as confidential and/or proprietary. Sponsor shall use reasonable efforts to maintain such information in confidence and will employ reasonable and appropriate procedures to prevent its unauthorized publication or disclosure. Sponsor will not use Subrecipient proprietary or confidential information for any purpose other than in the performance of the agreement. The obligations of the confidentiality set forth in this paragraph

shall survive termination or expiration of this agreement for a period of five (5) years unless otherwise agreed by the parties.

Article XIII – Liability

Each party will be solely responsible for its liability for bodily injury, including death, or damage to property under the common law or statutory law of New Mexico, and for only its own attorney fees and costs arising from the act or failure to act of such party or of its regents, directors, members, shareholders, officers, agents and employees pursuant to this Agreement; provided however, the foregoing obligation is a statement of responsibility pursuant to common and statutory law only and does not constitute an agreement to indemnify. The liability and responsibility of New Mexico Institute of Mining and Technology shall be subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4- through 41-4-27, and of any amendments thereto, and shall be construed and applied in accordance with the laws of the State of New Mexico, irrespective of the conflict of law and choice of law principles of New Mexico or any other jurisdiction. (Add subrecipient's limitations if applicable.)

Article XIV - Agreement Modification

(a) Any agreement to change the terms of this document in any way shall be valid only if the change is made in writing and approved by mutual agreement of authorized representatives of the parties hereto.

(b) Sponsor's engineering and technical personnel may, from time to time, render assistance or give technical advice to, or affect an exchange of information with Subrecipient's personnel in a liaison effort concerning this subcontract. However, such exchange or advice shall not vest Subrecipient with authority to change the work hereunder or the provisions of the Subaward, nor shall any change in the work or provisions be binding on the Sponsor unless incorporated as a change in accordance with paragraph (a) above.

Article XV - Additional Terms and Conditions

The Work under this subcontract is being sponsored by Funding Agency Name and Award Number, Agency's Grant/Contract General Conditions Form No. xxx is hereby incorporated as Exhibit B of this subcontract. Subrecipient shall comply with these provisions where applicable.

Allowability of Costs will be determined in accordance with 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

If subcontracting with a commercial organization, the above verbiage regarding allowability of costs may not be acceptable in which case offer the following as an alternative:

Allowability of Costs under Sponsor's prime contract will be determined in accordance with 2 CRF 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for

Federal Awards. Allowability of Subrecipient costs will be determined in accordance with FAR 31.2 Cost Principles for Contracts with Commercial Organizations. In the event any Subrecipient costs are disallowed under the prime contract because of a conflict between the provisions of 2 CFR 200 and FAR 31.2, the provisions of 2 CFR 200 shall govern.

Article XVI - Reports

Use this section or not as applicable, such as

A Final technical/progress report will be submitted to Sponsor's Technical contact as shown in Article V within XX days after the end of the period of performance.

Monthly technical/progress reports will be submitted to the Sponsor Sponsor's Technical contact as shown in Article V within XX days of the end of the month.

Quarterly technical/progress reports will be submitted within thirty (30) days after the end of each project quarter to the Sponsor's Technical contact as shown in Article V. Technical/progress reports on the project as may be required by Sponsor in order that Sponsor may be able to satisfy its reporting obligations to the Federal Awarding Agency.

Annual technical /progress reports will be submitted within days prior to the end of each project period to the Sponsor's Technical contact as shown in Article V. Such report shall also include a detailed budget for the next budget period, updated Other Support for key personnel, certification of appropriate education in the conduct of human subject research of any new key personnel, and annual IRB or IACUC approval, if applicable.

In accordance with 37 CFR 401.14, Subrecipient agrees to notify Sponsor's Technical and Administrative contacts as shown in Article V within days after Subrecipient's inventor discloses invention(s) in writing to Subrecipient's personnel responsible for patent matters. The Subrecipient will submit a final invention report using Awarding Agency specific forms to the Sponsor's Administrative contact as shown in Article V within 60 days of the end of the period of performance so that it may be included with the Sponsor's final invention report to the Awarding Agency. A negative report is not required.

A Certification of Completion, in accordance with 2 CFR 200.201(b)(3), will be submitted within XX days after the end of the project period to the Sponsor's Administrative contact as shown in Article V (for Fixed Price subawards only.)

Property Inventory Report; frequency, type, and submission instructions listed here and only to be used when required by Sponsor's Federal Award.

Article XVII – Federal Funding Accountability and Transparency Act (If applicable)

As pertaining to Subrecipient's efforts under this Agreement, Subrecipient shall assist Sponsor with compliance with the Federal Funding Accountability and Transparency Act (FFATA or Transparency Act) reporting requirements and other applicable laws and regulations pertaining to transparency. As of October 1, 2010 all federal subawards with a value of \$25,000 or more are subject to the FFATA subaward reporting requirements. Subrecipient shall complete the FFATA form provided as Exhibit F.

Notwithstanding the foregoing, such reporting requirements will **apply only if**, in the Subrecipient's preceding fiscal year:

1. The Subrecipient's gross income exceeded \$300,000; and

2. The Subrecipient received 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
3. The Subrecipient received \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
4. There is no other public access to the executive compensation information through such avenues as periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

Even if Subrecipient is exempt from reporting the names and total compensation of each of the five most highly compensated company executives, the other information and reason for exemption must be reported to Sponsor in order for Sponsor to report Subrecipient's response. Subrecipient's failure to submit to Sponsor the Transparency Act Reporting Form may result in termination of this Agreement according to the terms and Conditions of this Agreement.

Article XVIII - Insurance

Sponsor as an agency of the State of New Mexico is self-insured for liability protection. Such protection applies to Sponsor officers and employees only. All other individuals and organizations must provide their own liability coverage.

Article XIX - Property and Equipment Accountability (if applicable)

Subrecipient shall have a property management system in place which will allow for the control, protection, preservation and maintenance of property either acquired and/or furnished under this agreement.

Title, inventory, accountability and disposition of equipment will be in accordance with Funding Agency's Contract Guidelines. For awards subject to 2 CFR 200, title vests with Sponsor and must be returned upon completion of the project.

Article XX - Governing Law

This agreement will be governed by the laws of the state of New Mexico.

Article XXI – Termination

It is understood and agreed that either party upon thirty (30) days written notice may terminate this project for cause. In the event of termination by the Sponsor, Subrecipient may make no further commitments without specific authorization from the Sponsor. Subrecipient shall furnish

cease work notice to each immediate subrecipient and supplier that will be affected by the notification.

In the event of termination by Subrecipient, any unexpected or unobligated balance of funds advanced by the Sponsor shall be refunded to the Sponsor.

Article XXII - Other Agreement Clauses

1. Representations

Subrecipient represents that the services provided under this agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing services of the same or substantially similar nature. The exclusive remedy for any breach of the foregoing warranty shall be that the Subrecipient, at its own expense, and in response to written notice by Sponsor within ninety (90) days after performance of the services at issue, shall, at its own option, either (1) re-perform the services to conform to this standard; or (2) refund to Sponsor amount paid for non-conforming services.

Sponsor represents to Subrecipient that it has the right to use, disclose and disseminate the information, specifications and data that it has provided or will provide to Subrecipient in order for Subrecipient to perform the services and to create the deliverable, if any, identified in Exhibit A. Sponsor further represents that possession and use of that information, specifications and data by Subrecipient under the terms and conditions of these agreements will not constitute an infringement upon any patent, copyright, trade secret, or other intellectual property right of any third party.

2. Severability

If any covenant, condition, term, or provision contained in this agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such covenant, condition, term, or provision shall be severed from this agreement, and the remaining covenants, conditions, terms and provisions contained herein shall continue in force and effect, and shall in no way be affected, prejudiced or disturbed thereby.

3. Disputes

Sponsor and Subrecipient agree to first enter into negotiations to resolve any controversy, claim, or dispute arising under or relating to this agreement. The parties agree to negotiate in good faith to reach a mutually agreeable resolution of such dispute within a reasonable period of time. If good faith negotiations are unsuccessful, Sponsor and Subrecipient agree to resolve the dispute to binding and final arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The arbitration shall take place in the State of New Mexico. The decision of the

arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

Pending resolution of any dispute arising hereunder, Subrecipient shall proceed diligently with the performance of this Agreement in accordance with the Sponsor's direction concerning the subject matter of such dispute.

4. Force Majeure

Neither party shall be liable for any failure of or delay in performance of its obligations under this agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of God, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and within the party's power to satisfy), acts of any governmental body, failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, or inability to obtain labor, materials, equipment, or transportation (collectively referred to herein as "Force Majeure"). Each party shall use its reasonable efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event.

5. Notices

All notices or other written communication required or permitted to be given under any provision of this agreement shall be deemed to have been given by the notifying party if mailed by certified mail, return receipt requested, to the receiving party addressed to the mailing address set forth in Article V of this agreement, or such other address as the parties may designate in writing to the other parties. Additionally, notices sent by any other means (i.e., facsimile, overnight delivery, courier, etc.) may be acceptable subject to written confirmation of both the transmission and receipt of the notice.

6. Third Party Beneficiaries

The agreement does not create, and shall not be construed as creating, any rights or interests enforceable by any person not a party to this agreement.

7. Waiver or Modification

This agreement may be modified, or part or parts hereof waived, only by an instrument in writing specifically referencing this agreement and signed by an authorized representative of both parties.

8. Assignment

Neither Party may sell, assign, transfer, or otherwise convey any of its rights or delegate

any of its duties under this agreement without prior written consent of the other Party, which consent may not be unreasonably withheld.

9. Nothing contained in this Agreement shall: (1) authorize or empower either Party to act as partner or agent of the other Party in any manner; (2) authorize or empower or deem one Party to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of any other Party; or (3) authorize or empower or deem a Party to bind any other Party in any manner or make any representation, warranty, covenant, agreement, or commitment on behalf of any other Party.
10. Subrecipient will be required to provide the level of security required by Sponsor.
11. Subrecipient will comply with all Federal, State, and Local laws and regulations, including any health, safety, explosive requirements, and tax liability (including New Mexico Gross Receipts Tax), that may be applicable to this Agreement and shall, at the request of the Sponsor, certify to the effect that it has complied with said laws and regulations.
12. ITAR DATA

No technical data furnished to Subrecipient by Sponsor as part of this Order or Agreement, or developed by Subrecipient directly from such data during performance of this Order, shall be exported to any foreign national, firm or country, including foreign nationals employed by or associated with the United States, without first complying with the licensing, approval, and all other requirements of the U.S. export control laws, regulations, and directives, including but not limited to the Arms Export Control Act (22 USC 2778), International Traffic in Arms Regulations (22 CFR, Part 120-130), Export Administration Act (50 USC 2401-2410 as amended), Export Administration Regulations (15 CFR Part 730-799) and DoD directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure. Subrecipient agrees to obtain written consent of Sponsor prior to submitting any request or authority to export any such technical data.

While this Agreement remains in effect and for a period of one year after the expiration or termination hereof, Subrecipient shall not, directly or indirectly, through one or more intermediaries or affiliates or otherwise, without the prior written consent of the President of New Mexico Institute of Mining and Technology, (i) employ or enter into a contractual relationship with, (ii) solicit for employment or a contractual relationship with, (iii) discuss employment or a contractual relationship with, or (iv) interfere in any other material manner with the relationship with New Mexico Institute of Mining and Technology of, any person who on such effective date or hereafter is an employee of New Mexico Institute of Mining and Technology and who has engaged in or performed or hereafter engages in or performs work or activity on behalf of New Mexico Institute of Mining and Technology relating to the negotiation or performance of all or any part of this Agreement. Subrecipient understands and agrees that a breach of this covenant would inevitably inflict unique and irreparable harm upon New Mexico Institute of Mining and Technology and that as a result, New Mexico Institute of Mining and Technology shall be entitled, in addition to its other rights and remedies for a material breach of this Agreement by Subrecipient, to enforce this covenant by injunction or decree of specific

performance.

Article XXIII – Assurances

The Subrecipient certifies that:

- A. **NON-DELINQUENCY:** It is not delinquent on the repayment of any Federal debt.
- B. **DEBARMENT AND SUSPENSION:** Subrecipient certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from covered transactions by any Federal department or agency.
- C. **DRUG-FREE WORKPLACE:** It is in compliance with the Federal Drug-Free Workplace Act (PL 100-690).
- D. **LOBBYING:**
- It is in compliance with Public Law 101-121, prohibiting recipients of Federal grants, cooperative agreements, contracts, or loans from using appropriated funds for lobbying in connection with the grant, cooperative agreement, contract, or loan.
 - If funds other than federally appropriated funds have been paid or shall 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 federal contract, grant, loan or cooperative agreement, Subrecipient shall complete and submit Standard Form –LLL “Disclosure Form to Report Lobbying,” in accordance with its instructions.
 - Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including agreements under contracts, grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- E. **NONDISCRIMINATION STATUTES:** Subrecipient certifies that it will comply with the following nondiscrimination statutes and their implementing regulations and that assurances have been filed:
- Age Discrimination Act of 1967 as amended, Titles VI and VII of the Civil Right Act of 1964 as amended, Executive Order 11246 entitled Equal Employment Opportunity as amended by Executive Order 11375
 - Section 503 of the Rehabilitation Act of 1973 (Public Law 93-112 and 29 USC 794) as amended
 - Section 901 of Title IX of the Educational Amendments of 1972 (PL92-318)
 - Affirmative Action for Disabled Veterans and Veterans of the Vietnam ERA Public Laws 92-540 and 93-508, Executive Order 11701 and the regulations of the Secretary of Labor (41 CFR part 60-250)

F. 2 CFR 200 Audit or Acceptance Letter from Cognizant Federal Agency- This statement certifies the Subrecipient's most recent (must be within two years) 2 CFR 200 Audit or other appropriate independent audit has been accepted by its cognizant Federal Agency as meeting governmental reporting standards. Check one of items below. If yes, please attach a copy.

_____ No _____ Yes, If yes, date of audit _____

G. SCIENTIFIC MISCONDUCT: Subcontract has established administrative or other policies for dealing with and reporting possible misconduct in science and has complied with all federal policies and regulatory requirements regarding misconduct in science, including the filing of all necessary assurances and certifications.

H. FINANCIAL CONFLICT OF INTEREST (required when issuing a subaward under an NSF or PHS award)

Not applicable because this project is not being funded by NSF or PHS

Subrecipient hereby certifies that it has an active and enforced conflict of interest policy that is consistent with the provision of 42 CFR Part 50, Subpart F, "Responsibility of Applicants for Promoting Objectivity in Research." Subrecipient also certifies that, to the best of Institution's knowledge, (1) all financial disclosures have been made related to the activities that may be funded by or through a resulting agreement, and required by its conflict of interest policy; and (2) all identified conflicts of interest have or will have been satisfactorily managed, reduced or eliminated in accordance with Subrecipient's conflict of interest policy prior to the expenditures of any funds under any resultant agreement.

Subrecipient does not have an active and/or enforced conflict of interest policy, and hereby agrees to abide by NMIMT's policy.

I. Subrecipient is in compliance with Davis-Bacon Act as amended, 40 U.S.C. 276a to a-7

As a general rule, it is unlikely that the Davis-Bacon Act, which among other things requires payment of prevailing wages on projects for the construction of public works, would apply to financial assistance awards. However, the presence of certain factors (e.g., requirement of particular program statues; title to a construction facility resting in the Government) might necessitate a closer analysis of the award, to determine if the Davis-Bacon Act would apply in the particular factual situation presented. (Reference Federal Register Part III Department of Energy 10 CFR Part 600 Financial Assistance Regulations; Final Rule Appendix B to Subpart D to Part 600- Contract Provisions) ***Ask Funding Agency to make determination.*** This public policy is invoked either by specific reference under T&C's of a federal award or when agreement is governed by OMB A-133.

Construction effort qualifies as a vendor relationship consequently, the procurement should go thru Purchasing Dept. However, periodically a subrecipient will have a hybrid SOW (part research and part construction so this paragraph needs to be cited. Speak with Purchasing regarding additional monitoring requirements involved i.e., PR certifications must be sent and reviewed that they are paying prevailing wages.

These certifications are a material representation of fact upon which reliance was placed when this transaction was made or entered into. Subrecipient agrees to notify SPONSOR immediately if there is any change of status in the above.

For-profit Subrecipients – Audit Requirements under 2 CFR 200 do not apply to for-profit subrecipients. SPONSOR is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. Methods to ensure compliance for federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the subaward, and post-award audits. Refer to discussion under main narrative of procedure. Monitoring methods can include desk reviews.

Article XXIV- Contractor Certification

Complete and sign Exhibit C – Vendor Registration Form available at <http://www.nmt.edu/purchasing-services-forms>

This agreement contains the complete understanding of the parties hereto.

[Insert Subrecipient Name Here]

New Mexico Institute of Mining & Technology

Signature Date

Lonnie Marquez, V.P. Admin. & Finance Date

Name / Title

NMIMT internal notifications/approvals:

Sponsored Projects Administration Date

NMIMT Property Office Date

(if equipment is to be purchased from subaward)