PART I – THE SCHEDULE

SECTION B

SUPPLIES OR SERVICES AND PRICES/COSTS

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B.1 TYPE OF CONTRACT

This is a performance-based Cost-Plus-Award Fee Contract to directly support the environmental clean-up mission with a fee structure that provides a strong financial motivation for the Contractor to furnish safe, compliant, cost-effective and energy-efficient services to further the U.S. Department of Energy (DOE) Office of River Protection (ORP) mission to store, retrieve and treat Hanford tank waste, store and dispose of treated waste, and close the tank farm waste management areas to protect the Columbia River.

B.2 ITEM(S) BEING ACQUIRED

(a) The Contractor shall, in accordance with the terms of this Contract (Contract refers solely to the Tank Operations Contract), provide the personnel, equipment, materials, supplies, and services, and do all things necessary for, or incident to, providing its best efforts to perform all requirements of this Contract.

(b) For purposes of cost collection, reporting, work authorization, and administration of the Contract fee structure, the Contract consists of 23 activities divided among six (7) Contract Line Item Numbers (CLINs) and authorized in accordance with the Section B Clause entitled, *DOE Authorization of Work*. The activities identified below are further defined in Section J Attachment entitled, *Supplemental Work Description Tables*:

(1) *CLIN 1 – Base Operations*:

a. Sub-CLIN 1.1: Transition;
b. Sub-CLIN 1.2: Safe, Compliant Operations; and
c. Sub-CLIN 1.3: Analytical Laboratory Support.

(2) *CLIN 2 – Single-Shell Tank (SST) Retrieval and Closure*:

a. Sub-CLIN 2.1: Single-Shell Tank Retrieval; and
b. Sub-CLIN 2.2: Single-Shell Tank Farm (Waste Management Area) Closure.

(3) *CLIN 3 – Waste Treatment and Immobilization Plant (WTP) Support:*

a. Sub-CLIN 3.1: Treatment Planning, Waste Feed Delivery, and WTP Transition;
b. Sub-CLIN 3.2: WTP Operational Readiness;
c. Sub-CLIN 3.3: Immobilized High-Level Waste (IHLW) Storage and Shipping Facility Construction; and
d. Sub-CLIN 3.4: Upgrade and Operate the Effluent Treatment Facility (ETF).

(4) *CLIN 4 – Supplemental Treatment*:

a. Sub-CLIN 4.1: Demonstration Bulk Vitrification System (DBVS) Construction and Operations;

b. Sub-CLIN 4.2: Extended Demonstration Bulk Vitrification System Operations;
c. Sub-CLIN 4.3: Supplemental Treatment Design
d. Sub-CLIN 4.4: Supplemental Treatment Construction and Operations
e. Sub-CLIN 4.5: Transuranic Tank Waste Treatment and Packaging.

(5) *CLIN 5 – Early Feed and Operation of the WTP Low Activity Waste (LAW) Facility:*

a. Sub-CLIN 5.1: Tank Selection, Retrieval, Pretreatment and Feed Delivery Design;
b. Sub-CLIN 5.2: Retrieval, Pretreatment and Feed Delivery Construction and Operations;
c. Sub-CLIN 5.3: (moved to Sub-CLIN 3.4)
d. Sub-CLIN 5.4: LAW/BOF/LAB Operations.

(6) *CLIN 6 – Pension and Welfare Plans:*

a. Sub-CLIN 6.1: Hanford Employee Retirement and Benefit Plan Management; and
b. Sub-CLIN 6.2: Legacy Pension and Benefit Plan Management.

(7) *CLIN 7 – American Recovery and Reinvestment Act (ARRA) Workscope:*

a. Sub-CLIN 7.1: ARRA workscope under Sub-CLIN 1.2 – Safe, Compliant Operations;
b. Sub-CLIN 7.2: ARRA workscope under Sub-CLIN 1.3 – Analytical Laboratory Support;
c. Sub-CLIN 7.3: ARRA workscope under Sub-CLIN 3.1 – Treatment Planning, Waste Feed Delivery, and WTP Transition; and
d. Sub-CLIN 7.4: ARRA workscope under Sub-CLIN 3.3 – Immobilized High-Level Waste (IHLW) Storage and Shipping Facility Construction
e. Sub-CLIN 7.5: ARRA workscope under Sub-CLIN 3.4 - Upgrade and Operate the Effluent Treatment Facility (ETF).
f. Sub-CLIN 7.6: ARRA workscope under Sub-CLIN 2.1 Single Shell Tank (SST) Retrieval and Closure

B.3 OBLIGATION AND AVAILABILITY OF FUNDS

(a) Obligation of Funds. Pursuant to the Section I Clause entitled, FAR 52.232-22 Limitation of Funds, total funds in the amount of $2,517,822,909.68 have been allotted for obligation and are available for payment of services provided from the effective date of the Notice to Proceed through September 30, 2013.

Of the total identified above, $323,855,000.00 in Recovery Act funds have been allotted for obligation and are available for payment of services provided from the effective date of this modification through September 30, 2011. (Subject to Section I clause 52.216-24 Limitation of Government Liability) and $2,094,967,909.68 in non-Recovery Act funds

are available for payment of services through September 30, 2013.

(b) Availability of Funds. Except as may be specifically provided in the Section I Clause entitled, *DEAR 952.250-70, Nuclear Hazards Indemnity Agreement*, the duties and obligations of DOE hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the U.S. Congress that DOE may legally spend for such purposes.

(c) No fee shall be paid to the contractor for the Recovery Act work, including provisional, prior to the negotiation of any equitable adjustment in the fee and the subsequent modification of the contract to reflect the mutual agreement between the contractor and the Contracting Officer.

B.4 CONTRACT COST AND CONTRACT FEE

This Section establishes the *Total Contract Cost* and *Contract Fee*. Within Table B.4-1:

(a) *Contract Period* is defined as the *Transition Period, Base Period, and Option Period(s)* (if exercised) described in the Section F Clause entitled, *Period of Performance.*

(b) *Contract Cost* is defined as all costs initially proposed by the Contractor.

(c) *Available Fee* is defined as the maximum amount of fee that may be earned under the Contract by Contract period.

(d) *Contract Price* in Table B.4-1 is the sum of *Contract Cost* and *Available Fee*, in each year of Contract performance.

(e) *Total Contract Cost* is defined as the cumul*ative Contract Cost for all Con*tract periods.

(f) *Total Available Fee* is *d*efined as the cumulative *Available Fee* for all Contract periods.

(g) *Total Contract Price* is defined as the sum of *Total Contract Cost* and *Total Available Fee*.

(h) *Contract Line Item Number (CLIN)* references a specific category of work as defined in the Section C, *Statement of Work*. Proposed costs shall be appropriately categorized into the individual CLINs in Table B.4-1.

(i) *Contract Cost, Contract Price, and Available Fee* by Fiscal Year and by Sub-CLIN will be adjusted annually by the Contracting Officer upon approval of the Performance Measurement Baseline, and whenever changes affecting the table are made under the Section I Clause entitled, *Changes – Cost Reimbursement*.

B.5 CHANGES TO CONTRACT COST AND CONTRACT FEE

(a) Funding.

(1) DOE intends to obligate funding to the Contract in accordance with the *Contract Price* shown by fiscal year in Table B.4-1, *Contract Cost and Contract Fee*. The Contractor shall not be entitled to an equitable adjustment to *Available Fee* if the obligated funding by fiscal year is within 10% of the amount shown in Table B.4-1.

(2) If DOE does not obligate funding within the parameters detailed in paragraph (a)(1) above, the Contracting Officer may initiate a change or consider a request for an equitable adjustment to the *Contract Price* and/or Schedule in accordance with the Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement, Alternates II, III, and IV*.

(b) Performance Risk.

(1) Changes to *Total Available Fee* will accurately reflect the corresponding changes to the Contract with respect to performance risk as determined by DEAR 915.404-4-70, DOE structured profit and fee system and implemented by the profit-analysis factors defined in FAR 15.404-4, *Profit*. Accordingly, changes to the Contract resulting in an increase or decrease to the Contractor's performance risk as defined in FAR 15.404-4(d)(1), shall cause a proportionate increase or decrease to the *Total Available Fee*.

(2) If performance risk changes, the Contracting Officer may initiate a change or consider a request for equitable adjustment to Contract Price and/or Schedule in accordance with the Section I Clause entitled, FAR 52.243-2, Changes – Cost Reimbursement, Alternates II, III, and IV.

Table B.4-1, Contract Cost and Contract Fee
($'s in K)

CLIN	Sub-CLIN	Auth	Transition	Base Period						Option Period 1				Option Period 2			Contract
			FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	Totals	FY 2014	FY 2015	FY 2016	Totals	FY 2017	FY 2018	Totals	Totals
CLIN 1 Base Operations	1.1[1]	A	5,494	0	0	0	0	0	0	0	0	0	0	0	0	0	5,494
	1.2.1	A	0	136,911	131,899	142,216	143,854	153,567	708,447	145,843	103,837	140,981	390,661	174,198	166,046	340,244	1,439,352
	1.2.2	A	0	0	11	6	2,510	780	3,307	321	152	31	504	32	32	64	3,875
	1.3	A	0	14,398	14,649	16,974	17,775	18,234	82,030	18,203	18,608	15,885	52,696	13,840	14,891	28,731	163,457
CLIN 2 SST Retrv. & Closure	2.1	A	0	39,669	28,153	42,729	57,276	67,012	234,839	53,841	62,477	73,999	190,317	69,945	43,603	113,548	538,704
	2.2	A	0	12,070	14,246	22,238	27,879	19,339	95,772	14,874	15,408	8,334	38,616	4,298	2,872	7,170	141,558
CLIN 3 WTP Support	3.1	A	0	9,725	16,257	24,005	29,459	26,166	105,612	25,735	18,947	20,424	65,106	10,878	5,001	15,879	186,597
	3.2	A	0	3,085	3,154	3,255	4,864	3,455	17,813	3,535	3,333	3,421	10,289	3,472	3,542	7,014	35,116
	3.3	A	0	931	0	832	4,277	1,376	7,416	3,727	17,945	35,567	57,239	25,277	19,708	44,985	109,640
	3.4	A	0	160	543	3,394	9,593	9,535	23,225	0	0	0	0	0	0	0	23,225
CLIN 4 Supplemental Treatment	4.1		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	4.2		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	4.3	A	0	0	2,500	3,677	2,158	2,210	10,545	2,271	2,332	2,394	6,997	2,460	2,529	4,989	22,531
	4.4	A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	4.5		0	9,590	5,759	17,101	9,923	10,222	52,595	3,496	3,015	0	6,511	0	0	0	59,106
CLIN 5 Early Feed & Operation of the WTP LAW	5.1		0	34,118	6,848	2,674	1,973	2,648	48,261	436	0	0	436	0	0	0	48,697
	5.2		0	0	34,417	49,008	43,452	35,379	162,256	10,092	21,416	21,908	53,416	22,412	22,928	45,340	261,012
	5.3		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	5.4		0	0	0	0	0	0	0	90,880	124,209	127,237	342,326	131,281	134,315	265,596	607,922
CLIN 6 Pension & Welfare Plans	6.1	A	0	20,036	21,877	23,951	26,162	27,523	119,549	30,095	32,920	36,035	99,050	39,566	43,484	83,050	301,649
	6.2	A	0	100,827	113,582	117,716	126,066	122,161	580,352	123,155	118,010	113,995	355,160	109,913	106,517	216,430	1,151,942
Base Contract Sub-Totals	Contract Cost		5,494	381,520	393,895	469,776	507,221	499,607	2,252,019	526,504	542,609	600,211	1,669,324	607,572	565,468	1,173,040	5,099,877
	Available Fee[1]		0	11,565	21,188	21,608	27,314	22,210	103,885	TBD	TBD	TBD	80,574	TBD	TBD	57,238	241,697
	Contract Price		5,494	393,085	415,083	491,384	534,535	521,817	2,355,904	TBD	TBD	TBD	1,749,898	TBD	TBD	1,230,278	5,341,574
CLIN 7 American Recovery and Reinvestment Act (ARRA)	7.1	A	0	29,362	89,029	63,680	0	0	182,071	0	0	0	0	0	0	0	182,071
	7.2	A	0	2,661	17,260	11,791	0	0	31,712	0	0	0	0	0	0	0	31,712
	7.3	A	0	5,756	26,731	26,448	0	0	58,935	0	0	0	0	0	0	0	58,935
	7.4	A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	7.5	A	0	539	6,943	3,268	0	0	10,750	0	0	0	0	0	0	0	10,750
	7.6	A	0	0	10,832	7,213	0	0	18,045	0	0	0	0	0	0	0	18,045
ARRA Sub-Totals	Contract Cost		0	38,318	150,795	112,400	0	0	301,513	0	0	0	0	0	0	0	301,513
	Available Fee		0	2,853	11,180	8,309	0	0	22,342	0	0	0	0	0	0	0	22,342
	Contract Price		0	41,171	161,975	120,709	0	0	323,855	0	0	0	0	0	0	0	323,855
Contract Totals	Contract Cost		5,494	419,838	544,690	582,176	507,221	499,607	2,553,532	526,504	542,609	600,211	1,669,324	607,572	565,468	1,173,040	5,401,390
	Available Fee[1]		0	14,418	32,368	29,917	27,314	22,210	126,227	TBD	TBD	TBD	80,714	TBD	TBD	57,262	264,203
	Contract Price		5,494	434,256	577,058	612,093	534,535	521,817	2,679,759	TBD	TBD	TBD	1,750,038	TBD	TBD	1,230,302	5,665,593

Table B.4-1a Authorized Available Base Fee to Date ($000)

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	Totals
Available Fee for Auth.Sub-CLINs	8,287	17,661	16,448	23,176	27,591	**93,164**

NOTE: *Fee amounts negotiated after contract award may not be available to be earned in the annual performance period the costs and fee were negotiated. However, additional fee negotiated is put in the unallocated fee pool and is available to be earned in the future. Refer to Section J.4, Performance Evaluation Measurement Plan for details on allocation of fee pool to contract performance measures.*

B.6 BASIS FOR TOTAL AVAILABLE FEE

The cost basis for *Total Available Fee* shall be the *Total Contract Cost*, excluding:

(a) Pass-through funding provided to other contractors for Hanford Site services identified in the Section J Attachment entitled, *Hanford Site Services and Interface Requirements Matrix;*

(b) Costs associated with sponsorship, management, administration and/or contributions for Legacy Plans (set forth in the Section H Clause entitled, *Employee Compensation: Pay and Benefits*) administered under this Contract; and

(c) Costs associated with sponsorship, management, administration and/or contributions for any defined benefit pension plan.

Employee benefit plan costs shall be included in the *Contract Price* by fiscal year and by Contract period shown in Table B.4-1, *Contract Cost and Contract Fee*.

B.7 FEE STRUCTURE

(a) The Contracting Officer reserves the unilateral discretion to determine the amount of *Available Fee* for the *Base Period* and *Option Period(s)* (if exercised), to each fiscal year and Sub-CLIN as described in this Clause; and as adjusted in the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*. The Contractor will have the opportunity to earn 100% of the *Available Fee* within a Contract period, for work authorized in accordance with the Section B Clause entitled, *DOE Authorization of Work* and as adjusted in the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*.

(b) The Available Fee shown in Table B.4-1, *Contract Cost and Contract Fee*, can be earned through objective fee components and/or subjective fee components. The performance measures for these components and *Available Fee* for the period allocated to the fiscal year are provided in the Section J Attachment entitled, *Performance Evaluation and Measurement Plan (PEMP)*. The PEMP may contain annual and multi-year performance measures.

(1) *Available Fee* for the period allocated to annual performance measures may only be earned in that fiscal year. Allocated *Available Fee* for the fiscal year not earned in the fiscal year for an annual performance measure is unavailable and

not payable to the Contractor. The Contractor forfeits any rights to unearned fee. The Contracting Officer reserves the unilateral discretion to determine how any unearned fee will be utilized.

(2) *Available Fee* for the period allocated to fiscal years for multi-year performance measures may be earned incrementally or upon final fee determination. Allocated *Available Fee* not earned for a multi-year performance measure is unavailable and not payable to the Contractor. The Contractor forfeits any rights to unearned fee. The Contracting Officer reserves the unilateral discretion to determine how any unearned fee will be utilized.

(3) *Provisional Fee* is defined as *Available Fee* that is paid contingently during an annual performance period. *Provisional Fee* may become earned fee upon the final fee determination.

(4) *Incremental Fee* is defined as *Available Fee* that the Contractor may earn by achieving a specific, fee-bearing performance measure event, subject to withholding in accordance with Section B Clause entitled, Fee Determination and Payment.

(5) Individual performance measures may require the Contractor to exceed approved baseline performance to earn 100% of the fee allocated to that performance measure.

(c) The Contracting Officer will prepare and issue performance measures prior to the start of each fiscal year. The Contracting Officer may provide draft performance measures for Contractor review and input; however, the Contracting Officer reserves the unilateral discretion to issue the performance measures without Contractor review.

B.8 FEE DETERMINATION AND PAYMENT

(a) Fee earned under this Contract will be paid in accordance with the specific criteria defined in the PEMP and the Clauses in Section B. Monthly provisional payments of fee may be authorized by the Contracting Officer and will be made in accordance with paragraph (b) of this Clause.

(b) For annual performance measures that do not have specific, incremental, fee-bearing performance measure events, the Contractor may request Contracting Officer approval to execute a monthly draw of *Provisional Fee* payments from the Special Financial Institution Account. The Contractor may request a monthly *Provisional Fee* payment of up to 7.5% of fee allocated to such performance measures, subject to a maximum payment of 80% of fee allocated to such performance measures, and also subject to withholding by DOE as described in paragraphs (e) and (f) of this Clause.

(c) The Contractor shall request Contracting Officer acceptance of a specific, incremental, fee-bearing performance measure event. Following Contracting Officer acceptance of a specific, incremental, fee-bearing performance measure event, the Contractor may request Contracting Officer approval to execute a draw of *Incremental Fee* from the Special Financial Institution Account, subject to withholding by the Contracting Officer as described in paragraphs (e) and (f) of this Clause and the Section B Clause entitled, *Fee Reductions*.

(d) At the end of each year of Contract performance, the Fee Determining Official will make a final *Fee Determination* using the PEMP described in the Section B Clause entitled, *Fee Structure*. In the event that fee overpayment results from the *Provisional Fee* payments provided for in this Clause, the Contractor shall reimburse the unearned fee overpayment within 30 days of notification, to the Contracting Officer payable with interest in accordance with the Section I Clause entitled, *FAR 52.232-17*, *Interest*.

(e) Withholding of *Incremental* and *Provisional Fee* Payments for adverse Contract Performance.

(1) Withholding of *Incremental* and *Provisional Fee* Payments. If the Contractor demonstrates adverse performance, the Contracting Officer reserves the unilateral discretion to withhold *Incremental* and *Provisional Fee* Payments. Withheld Fee Payments are not subject to interest for the amount(s) of the withheld fee payment(s) under 5 CFR 1315, *Prompt Payment.*

(2) Release of Withheld *Incremental* and *Provisional Fee* Payments. The Contracting Officer may release withheld *Incremental* and *Provisional Fee* Payments and resume making *Incremental* and *Provisional Fee* Payments when the Contractor demonstrates sustained recovery in performance.

(f) Withholding of *Incremental* and *Provisional Fee* Payments for bankruptcy or other issues with guarantor company(ies)[4].

(1) Withholding of *Incremental* and *Provisional Fee*. In order to assure the Contractor's ability to repay any *Incremental* and *Provisional Fee* Payments that are determined to be in excess of the total fee earned, the Contracting Officer reserves the unilateral discretion to discontinue *Incremental* and *Provisional Fee* payments, in the event that a guarantor company files bankruptcy, is acquired by other owners, or impacted by other events that arise with the Contractor's guarantor company(ies) that can jeopardize DOE's ability to recover excess *Incremental Payment* and *Provisional Fee* Payments. Withheld Fee Payments are not subject to interest for the amount(s) of the withheld fee payment(s) under 5 CFR 1315, *Prompt Payment.*

(2) Release of Withheld *Incremental* and *Provisional Fee* Payments. Following receipt of evidence that bankruptcy or other issues do not affect the ability of the Contractor to continue to perform the obligations under the Contract, the Contracting Officer may release all *Incremental* and *Provisional Fee* Payments and resume making *Incremental* and *Provisional Fee* Payments.

B.9 FEE REDUCTIONS

(a) All earned fee in each year of Contract performance is subject to reductions imposed by the terms and conditions of this Contract, including, but not limited to:

(1) Section B Clause entitled, *Fee Determination and Payment;*

[4] Guarantor Company(ies) is defined as the company(ies) executing the performance guarantee (s) in Section H Clause entitled, *Performance Guarantee Agreement.*

(2) Section B Clause entitled, *Small Business Subcontracting Fee Reduction;*

(3) Section B Clause entitled, *DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate II) [DEVIATION]*;

(4) Section B Clause entitled, *Conditional Payment of Fee (CPOF) DOE Office of River Protection Site-Specific Performance Criteria/Requirements*;

(5) Section E Clause entitled, *FAR 52.246-3, Inspection of Supplies – Cost Reimbursement*;

(6) Section E Clause entitled, *FAR 52.246-5, Inspection of Services – Cost Reimbursement*;

(7) Section H Clause entitled, *Key Personnel*;

(8) Section I Clause entitled, *FAR 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity;*

(9) Section I Clause entitled, *FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data – Modifications;*

(10) Section I Clause entitled, *FAR 52.215-13, Subcontractor Cost or Pricing Data – Modifications;* and

(11) Section I Clause entitled, *FAR 52.243-2, Changes – Cost Reimbursement.*

(b) The maximum fee reduction in any one (1) year of Contract performance is the allocated *Available Fee*, as defined in the Section J Attachment entitled, *Performance Evaluation and Measurement Plan*, that can be earned in the year the event occurred.

B.10 SMALL BUSINESS SUBCONTRACTING FEE REDUCTION

(a) For the purpose of implementing this Clause, the percentage goals established in the Section J Attachment entitled, *Small Business Subcontracting Plan*, will remain in effect for the duration of the Contract, except as modified in accordance with the Section B Clause entitled, *Changes to Contract Cost and Contract Fee*. The Contractor shall submit annual updates to the narrative elements of the *Small Business Subcontracting Plan* by December 31 of each year.

(b) The Contractor's performance in meeting small business performance percentage goals in accordance with the Section H Clause entitled, *Self-Performed Work*, providing meaningful involvement for small businesses, and entering into the required Mentor-Protégé Agreement(s) will be evaluated after the:

(1) Three year period concluding at the end of the 3rd year of Contract performance;

(2) Two year period concluding at the end of the 5th year of Contract performance; and, if *Option Period 1* is exercised;

(3) If *Option Period 1* is exercised – two year period concluding at the end of the 7th year of Contract performance; and

(4) At the end of the Contract period of performance.

(c) The Contracting Officer will consider the Contractor's performance in meeting small business percentage goals and entering into the required Mentor-Protégé Agreement(s) when making a decision on the *Option Period(s)* authorization.

(d) If the Contractor has not met any or all of the subcontracting goals, has failed to provide meaningful involvement for small business, and/or has failed to enter into the required Mentor-Protégé Agreement(s) during the above specified periods, the Contracting Officer may reduce the earned fee by an amount up to 10% of total earned fee in each period of the four (4) multi-year periods described above.

(e) At Contract completion, the total amount of fee reduction for failure to meet its subcontracting goals shall be offset by any amount of liquidated damages assessed in accordance with the Section I Clause entitled, *FAR 52.219-16, Liquidated Damages – Subcontracting Plan*. The fee reduction amount will be a unilateral determination by the Contracting Officer and a permanent reduction in the earned fee under this Contract.

(f) Any reduction for failure to meet the requirements of the Section H Clause entitled, *Mentor-Protégé Program,* shall be in addition to any liquidated damages assessed in accordance with the Section I Clause entitled, *FAR 52.219-16, Liquidated Damages – Subcontracting Plan*. The fee reduction amount will be a unilateral determination by the Contracting Officer and a permanent reduction in the earned fee under this Contract.

B.11 ALLOWABILITY OF SUBCONTRACTOR FEE

(a) If the Contractor is part of a teaming arrangement as described in FAR Subpart 9.6, *Contractor Team Arrangements,* the team shall share in the *Total Available Fee* as shown in Table B.4-1. Separate additional subcontractor fee is not an allowable cost under this Contract for individual team members, or for a subcontractor, supplier, or lower-tier subcontractor that is a wholly-owned, majority-owned, or affiliate of any team member.

(b) The subcontractor fee restriction in paragraph (a) does not apply to members of the Contractor's team that are: (1) small business(es); (2) Protégé firms as part of an approved Mentor-Protégé relationship under the Section H Clause entitled, *Mentor-Protégé Program*; (3) subcontractors under a competitively awarded firm-fixed price or firm-fixed unit price subcontract; or (4) commercial items as defined in FAR Subpart 2.1, *Definitions of Words and Terms*.

B.12 DEAR 970.5215-3, CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES – FACILITY MANAGEMENT CONTRACTS (ALTERNATE II) (JAN 2004) [DEVIATION]

(a) General.

(1) The payment of earned fee, fixed fee, profit, or share of cost savings under this Contract is dependent upon:

(i) The Contractor's or contractor employees' compliance with the terms and conditions of this Contract relating to environment, safety, health and

quality (ESH&Q), which includes worker safety and health, including performance under an approved Integrated Safety Management System (ISMS); and

(ii) The Contractor's or contractor employees' compliance with the terms and conditions of this Contract relating to the safeguarding of Restricted Data and other classified information.

(2) The ESH&Q performance requirements of this Contract are set forth in its ESH&Q terms and conditions, including the DOE-approved Contractor ISMS or similar document. Financial incentives for timely mission accomplishment or cost effectiveness shall never compromise or impede full and effective implementation of the ISMS and full ESH&Q compliance.

(3) The performance requirements of this Contract relating to the safeguarding of Restricted Data and other classified information are set forth in the Section I Clause entitled, *FAR 52.239-1, Privacy or Security Safeguards (AUG 1996)*, and *DEAR 970.5204-2, Laws, Regulations, and DOE Directives*, as well as in other terms and conditions.

(4) If the Contractor does not meet the performance requirements of this Contract relating to ESH&Q or to the safeguarding of Restricted Data and other classified information during any performance evaluation period established under the Contract, otherwise earned fee, fixed fee, profit or share of cost savings may be unilaterally reduced by DOE.

(b) Reduction Amount.

(1) The amount of earned fee, fixed fee, profit, or share of cost savings that may be unilaterally reduced will be determined by the severity of the performance failure pursuant to the degrees specified in paragraphs (c) and (d) of this Clause.

(2) If a reduction of earned fee, fixed fee, profit, or share of cost savings is warranted, unless mitigating factors apply, such reduction shall not be less than 26% nor greater than 100% of the amount of earned fee, fixed fee, profit, or the Contractor's share of cost savings for a first degree performance failure, not less than 11% nor greater than 25% for a second degree performance failure, and up to 10% for a third degree performance failure.

(3) In determining the amount of the reduction and the applicability of mitigating factors, DOE will consider the Contractor's overall performance in meeting the ESH&Q or security requirements of the Contract. Such consideration will include performance against any site specific performance criteria/requirements that provide additional definition, guidance for the amount of reduction, or guidance for the applicability of mitigating factors. In all cases, DOE will consider mitigating factors that may warrant a reduction below the applicable range (see *48 CFR 970.1504-1-2*). The mitigating factors include, but are not limited to, the following ((v), (vi), (vii) and (viii) apply to ESH&Q only).

(i) Degree of control the Contractor had over the event or incident.

(ii) Efforts the Contractor had made to anticipate and mitigate the possibility of the event in advance.

(iii) Contractor self-identification and response to the event to mitigate impacts and recurrence.

(iv) General status (trend and absolute performance) of: ESH&Q and compliance in related areas; or of safeguarding Restricted Data and other classified information and compliance in related areas.

(v) Contractor demonstration to the Contracting Officer's satisfaction that the principles of industrial ESH&Q standards are routinely practiced (e.g., Voluntary Protection Program, ISO [International Organization for Standardization] 14000, *Environmental Management System Standards*).

(vi) Event caused by "Good Samaritan" act by the Contractor (e.g., off-site emergency response).

(vii) Contractor demonstration that a performance measurement system is routinely used to improve and maintain ESH&Q performance (including effective resource allocation) and to support DOE corporate decision-making (e.g., policy, ESH&Q programs).

(viii) Contractor demonstration that an Operating Experience and Feedback Program is functioning that demonstrably affects continuous improvement in ESH&Q by use of lessons-learned and best practices inter- and intra-DOE sites.

(4) (i) The amount of fee, fixed fee, profit, or share of cost savings that is otherwise earned by a Contractor during an evaluation period may be reduced in accordance with this Clause if it is determined that a performance failure warranting a reduction under this Clause occurs within the evaluation period.

(i) The amount of reduction under this Clause, in combination with any reduction made under any other clause in the Contract, shall not exceed the amount of fee, fixed fee, profit, or the Contractor's share of cost savings that is otherwise earned during the evaluation period.

(iii) For the purposes of this clause, earned fee, fixed fee, profit, or share of cost savings for the evaluation period shall mean the amount determined by DOE or fee determination official as otherwise payable based on the Contractor's performance during the evaluation period. Where the Contract provides for financial incentives that extend beyond a single evaluation period, this amount shall also include: any provisional amounts determined otherwise payable in the evaluation period; and, if provisional payments are not provided for, the allocable amount of any incentive determined otherwise payable at the conclusion of a subsequent evaluation period. The allocable amount shall be the total amount of the earned incentive divided by the number of evaluation periods over which it was earned.

(iv) The Government will effect the reduction as soon as practicable after the end of the evaluation period in which the performance failure occurs. If the Government is not aware of the failure, it will effect the reduction as soon as practical after becoming aware. For any portion of the reduction requiring an allocation the Government will effect the reduction at the end of the evaluation period in which it determines the total amount earned under the incentive. If at any time a reduction causes the sum of the payments the Contractor has received for fee, fixed fee, profit, or share of cost savings to exceed the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned (provisionally or otherwise), the Contractor shall immediately return the excess to the Government. (What the Contractor "has earned" reflects any reduction made under this or any other Clause of the Contract.)

(v) At the end of the Contract:

(A) The Government will pay the Contractor the amount by which the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned exceeds the sum of the payments the Contractor has received; or

(B) The Contractor shall return to the Government the amount by which the sum of the payments the Contractor has received exceeds the sum of fee, fixed fee, profit, or share of cost savings the Contractor has earned. (What the Contractor "has earned" reflects any reduction made under this or any other Clause of the Contract.)

(c) Environment, Safety, Health and Quality (ESH&Q). Performance failures occur if the Contractor does not comply with the Contract ESH&Q terms and conditions, including the DOE-approved Contractor ISMS. The degrees of performance failure under which reductions of earned or fixed fee, profit, or share of cost savings will be determined are:

(1) First Degree: Performance failures that are most adverse to ESH&Q. Failure to develop and obtain required DOE approval of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the Contractor's ISMS. The following performance failures or performance failures of similar import will be considered first degree.

(i) Type A accident (defined in DOE Order 225.1A, *Accident Investigations*); and

(ii) Two (2) Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to ESH&Q. They include failures to comply with an approved ISMS that result in an actual injury, exposure, or exceedence that occurred or nearly occurred but had minor practical long-term health consequences. They also include breakdowns of the

Safety Management System. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with an approved ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the Contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving ESH&Q. They include failures to comply with an approved ISMS that result in potential breakdown of the System. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliances documented through: external (e.g., Federal) oversight and/or reported per ~~DOE Order 232.1A~~ [DOE Manual 232.1A, *Occurrence Reporting and Processing of Operations Information*] requirements; or internal oversight ~~of DOE Order 440.1A.~~ [10 CFR 830, 10 CFR 835, 10 CFR 850, and 10 CFR 851] requirements.

(ii) Multiple similar non-compliances identified by external (e.g., Federal) oversight that in aggregate indicate a significant programmatic breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to the worker, the public, or the environment or that indicate a significant programmatic breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the Contract.

(d) Safeguarding Restricted Data and Other Classified Information. Performance failures occur if the Contractor does not comply with the terms and conditions of this Contract relating to the safeguarding of Restricted Data and other classified information. The degrees of performance failure under which reductions of fee, profit, or share of cost savings will be determined are as follows:

(1) First Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have resulted in, or that can reasonably be expected to result in, exceptionally grave damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered first degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating a risk of, loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, or any classification level of information in a Special Access Program (SAP), information identified as sensitive compartmented information (SCI), or high risk nuclear weapons-related data.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data, or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Top Secret Restricted Data or other information classified as Top Secret, any classification level of information in a SAP, information identified as SCI, or high risk nuclear weapons-related data.

(2) Second Degree: Performance failures that have been determined, in accordance with applicable law, DOE regulation, or directive, to have actually resulted in, or that can reasonably be expected to result in, serious damage to the national security. The following are examples of performance failures or performance failures of similar import that will be considered second degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Secret Restricted Data or other information classified as Secret.

(ii) Contractor actions that result in a breakdown of the safeguards and security management system that can reasonably be expected to result in the loss, compromise, or unauthorized disclosure of Secret Restricted Data, or other information classified as Secret.

(iii) Failure to promptly report the loss, compromise, or unauthorized disclosure of Restricted Data or other classified information regardless of classification (except for information covered by paragraph (d)(1)(iii) of this Clause).

(iv) Failure to timely implement corrective actions stemming from the loss, compromise, or unauthorized disclosure of Secret Restricted Data or other classified information classified as Secret.

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security. In addition, this category includes performance failures that result from a lack of Contractor management and/or employee attention to the proper safeguarding of Restricted Data and other classified information. These performance failures may be indicators of future, more severe performance failures and/or conditions, and if identified and corrected early would prevent serious incidents. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Non-compliance with applicable laws, regulations, and DOE directives actually resulting in, or creating risk of, loss, compromise, or unauthorized disclosure of Restricted Data or other information classified as Confidential.

(ii) Failure to promptly report alleged or suspected violations of laws, regulations, or directives pertaining to the safeguarding of Restricted Data or other classified information.

(iv) Failure to identify or timely execute corrective actions to mitigate or eliminate identified vulnerabilities and reduce residual risk relating to the protection of Restricted Data or other classified information in accordance with the Contractor's Safeguards and Security Plan or other security plan, as applicable.

(iv) Contractor actions that result in performance failures which unto themselves pose minor risk, but when viewed in the aggregate indicate degradation in the integrity of the Contractor's safeguards and security management system relating to the protection of Restricted Data and other classified information.

(e) Minimum requirements for specified level of performance.

(1) At a minimum the Contractor must perform the following:

(i) The requirements with specific incentives which do not require the achievement of cost efficiencies in order to be performed at the level of performance set forth in Section C, *Statement of Work*, work authorization directive(s), or similar document unless an otherwise minimum level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized which do not require the achievement of cost efficiencies in order to be performed at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total performance of the Contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Government. To the extent that the Contractor fails to achieve the minimum performance levels specified in Section C, *Statement of Work*, work authorization directive(s), or similar document, during the performance evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(f) Minimum requirements for cost performance.

(1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The Contractor's performance within the stipulated cost performance levels for the performance evaluation period shall be determined by the Government. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the performance evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

B.13 CONDITIONAL PAYMENT OF FEE (CPOF) DOE OFFICE OF RIVER PROTECTION SITE-SPECIFIC PERFORMANCE CRITERIA/REQUIREMENTS

This Clause supplements Section B Clause entitled, *DEAR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives – Facility Management Contracts (Alternate II) [Deviation]* by establishing Site specific Environment, Safety, Health, and Quality (ESH&Q), and security performance criteria/requirements. Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3. Site-specific performance criteria/requirements for ESH&Q, and Safeguards and Security are as follows:

(a) Environment, Safety, Health, and Quality

(1) <u>First Degree:</u> Performance failures relating to the criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].

(2) <u>Second Degree:</u> Performance failures relating to the criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].

(3) Third Degree: Performance failures that reflect a lack of focus on ESH&Q or failures to comply with an approved ISMS that may result in a negative impact to the public, worker or environment. The following performance failures, or events of similar import, are examples of performance failures that are considered third degree:

(i) Multiple similar non-compliances identified by external oversight (e.g., Federal) that in the aggregate indicate a significant programmatic breakdown.

(ii) Non-compliances or adverse performance trends that either have or may have negative impact to the public, worker, or environment or that indicate a programmatic breakdown.

(iii) Failure to notify the Contracting Officer upon discovery of events or conditions where notification is required by the terms and conditions of the Contract.

(iv) Failure to report required data accurately and in a timely manner.

(v) Failure to implement continuous improvement in ESH&Q performance through effective utilization of ISMS processes, including timely submittal of meaningful performance objectives, measurements and commitments.

(b) Safeguards and Security

(1) First Degree: Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].

(2) Second Degree: Performance failures relating to the performance criteria set forth in this Clause will be processed in accordance with DEAR 970.5215-3, Alternate II [Deviation].

(3) Third Degree: Performance failures that have been determined, in accordance with applicable law, regulation, or DOE directive, to have actually resulted in, or that can reasonably be expected to result in, undue risk to the common defense and security, and/or jeopardizes protection of the facility or Site security interests. The following are examples of performance failures or performance failures of similar import that will be considered third degree:

(i) Loss, theft, diversion, or unauthorized disclosure of information classified as Confidential.

(ii) Evidence that SNM data has been manipulated or falsified.

(iii) Inventory differences of Category IV SNM beyond alarm limits where there is no evidence that the difference is created by loss, theft, or diversion.

(iv) Loss, theft, or diversion of Category IV quantities of SNM that is due to a failure or inadequacy of performance by the contractor.

(v) Receipt of any topical area rating of Unsatisfactory on any DOE Safeguards and Security survey, audit, and/or inspection.

(vi) Failure to implement corrective action(s) in response to any third degree performance failure.

(vii) Non-compliant or adverse cyber security performance that indicates serious cyber security program degradation (e.g., negative mission impacts or compromise of sensitive information [Sensitive Unclassified Information, Personally Identifiable Information, Unclassified Controlled Nuclear Information], etc.).

B.14 DOE AUTHORIZATION OF WORK

DOE will authorize work as follows:

(a) The Contracting Officer will authorize the Contractor to begin performance on DOE-selected Sub-CLINS.

(b) The Contractor is authorized to conduct work in accordance with the approved *Performance Measurement Baseline* on all authorized Sub-CLINS, and subject to the limitations of the Section B Clause entitled, *Obligation and Availability of Funds*.

(c) Prior to the completion of the *Transition Period*, DOE will provide workscope direction that will be in effect from the initiation of the *Base Period* until DOE approval of the Contractor's initial *Performance Measurement Baseline* submittal.

(d) DOE reserves the unilateral discretion to modify the PEMP to allocate fee to the associated work.

(e) If the Contracting Officer does not authorize the Contractor to proceed with a Sub-CLIN, the Contractor shall not be entitled to allowable costs, opportunity to earn fee, partial termination costs, and any other similar items for that Sub-CLIN, and shall not be entitled to an equitable adjustment to fee for any other Contract requirement.