

ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.

CONTRACTOR AGREEMENT NO. N61489C

Fixed Price Construction Services Agreement

THIS FIXED PRICE CONSTRUCTION SERVICES AGREEMENT is made effective this ___ day of October?, 2015, by and between the Association of Universities for Research in Astronomy (hereinafter "AURA"), an Arizona non-profit corporation, at 670 N. A'ohoku Place, Hilo, Hawaii 96720 and xxxxxxxxxx, (hereinafter the "Contractor"), located at xxxxxxxxxxxx xxxxxxxxxxxx, xxx. AURA and the Contractor are collectively referred to herein as the "Parties."

Recitals:

A. Under Cooperative Agreement AST 0525280 between AURA and the United States of America represented by the National Science Foundation, Cooperative Support Agreement AST-06457970, CFDA #47.049, now in full force and effect, AURA, which operates the Gemini Observatory (Gemini), is engaged in the management, operation, and maintenance of observatories and related activities for research in the field of astronomy, and desires to enter into an agreement with Contractor to install a 94.8 kW AC net-energy metered photo-voltaic power system on the Gemini North Base Facility building located in Hilo, HI, in accordance with the project drawings and specifications set forth in the Statement of Work attached to this Agreement.

B. AURA desires that Contractor make available its services, or those of its employees, as specified in this document, in support of AURA's efforts in those areas in which Contractor has special professional and/or technical qualifications; and

C. Contractor has special professional and/or technical qualifications and capabilities, and is willing and able to perform said work under the terms and conditions set forth in this Fixed Price Construction Services Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein the parties do mutually agree as follows:

ARTICLE 1. SCOPE OF WORK

a. The Contractor shall provide all labor, materials, equipment, supplies, transportation, and supervision necessary to permit, procure, install, and interconnect a 98.4 kW Net Energy Meter PV array system on the Gemini North Base Facility support building located in Hilo, HI per the plans, drawings, and specifications in accordance with the terms of the Scope of Work/Technical Specifications set forth in Attachment A, a copy of which is attached hereto and incorporated herein by reference as though fully set forth herein (hereinafter sometimes referred to as "the Work" or "the Project"). Contractor agrees to perform the Work in accordance with the terms of the Scope of Work/Technical Specifications set forth in Attachment A.

b. The Work shall be performed in accordance with: 1) the Articles of this Agreement; 2) the AURA Fixed Price Construction Agreement Terms and Conditions contained herein; 3) the Scope of Work/Technical Specifications set forth in Attachment A; and 4) the Bid from Contractor entitled: "Contractor's Bid Document" and received on xxxxxxxxx, 2015, set forth in Attachment B. The Attachments immediately referred to above are attached to

Invoices may also be sent via US Mail to:
Karen Godzyk, Contracts Officer
AURA, Inc.
950 North Cherry Avenue
Tucson, AZ 85719

ARTICLE 5. CONTRACTUAL AUTHORITY OF AURA

- a. The AURA Contracts Officer(s) is/are the only person(s) authorized to approve changes in this Agreement and perform post-award functions in administering and enforcing this Agreement on behalf of AURA.
- b. The Contracts Officer assigned to this project is Karen Godzyk. Any questions relating to terms and conditions of this Agreement should be brought to her attention at 520-318-8357.
- c. The Technical Representative authorized to act on behalf of AURA for purposes of administering and providing direction to Contractor related to the detailed technical aspects of the Work is designated in Article 11 below. In no event, however, shall AURA be bound by any understanding, agreement, modification, change order, or other matter deviating from the provisions of this Agreement unless formalized by appropriate written contractual documents executed by the Contracts Officer. Technical direction by the Technical Representative is only valid if: (1) it is issued in writing and is consistent with the description of the work contained in the Scope of Work/Technical Specifications; (2) it does not constitute a new assignment of work nor change the express terms, conditions, or specifications of this Agreement; and (3) it does not constitute a basis for any increase in the contract price or extension of time for completion of the Work.
- d. The person executing this Agreement on behalf of AURA hereby warrants and represents that he or she has authority to enter into this Agreement on behalf of AURA.

ARTICLE 6. CONTRACTUAL AUTHORITY OF CONTRACTOR

- a. Promptly upon execution of this Agreement by Contractor, Contractor shall appoint a Project Manager acceptable to AURA, who shall be: (1) the primary contact for Contractor in all matters related to this Agreement; (2) responsible for the administration, coordination, and supervision of the Agreement and Work by Contractor; and (3) authorized to act on behalf of, sign for, and accept responsibilities on behalf of, Contractor. Contractor shall notify AURA of such appointment in writing, and shall not replace the Project Manager without the prior written consent of AURA.
- b. The person executing this Agreement on behalf of Contractor hereby warrants and represents that he or she has authority to enter into this Agreement on behalf of Contractor.

ARTICLE 7. PRESENCE ON AURA PREMISES

- a. The Contractor agrees that all persons working for or on behalf of the Contractor whose duties bring them upon AURA's premises shall obey the rules and regulations that are established by AURA and shall comply with the reasonable directions of AURA's officers.
- b. The Contractor shall be responsible for the acts of its employees, subcontractor(s), or agents while on AURA's premises. Accordingly, the Contractor agrees to take all necessary measures to prevent injury and loss to persons or property located on AURA's premises. The Contractor shall be responsible for all damages to persons or property caused by the Contractor, its subcontractors, or any of its agents or employees. The Contractor shall promptly repair, to the specifications of AURA, any damage that it, its subcontractor(s), or its

employees or agents may cause to AURA's premises or equipment. If the Contractor fails to repair such damage, AURA may repair or have repaired the damage, and the Contractor shall reimburse AURA promptly for the cost of the repair. Alternatively, AURA may deduct the cost of the repair from any amounts owed to Contractor under this Agreement and seek reimbursement for any unpaid amount of the cost of repair from Contractor.

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

d. The Contractor agrees that, in the event of an accident of any kind, Contractor will immediately notify the Technical Representative designated herein and thereafter furnish a full written report of such accident.

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

ARTICLE 8. USE OF AURA'S FACILITIES

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

ARTICLE 9. TECHNICAL REPRESENTATIVE(S)

The Technical Representative for AURA/Gemini on this project is Chas Cavedoni. If any questions arise during the performance of this Work, they should be brought to the attention of Chas Cavedoni at 808.974.2520 or via email at ccavedoni@gemini.edu.

Project Manager. Contractor shall designate one person as the person responsible for all aspects of managing the work under this project (the "Project Manager"). This person shall be Gemini's primary contact for all issues related to this Contract and the work performed under this Contract. The initial Project Manager shall be

Name:
Address:
City, State, Zip:
Phone:
Fax:
Email:

ARTICLE 10. SPECIAL CONDITIONS

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

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

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

- Appropriate Contractor's license number(s) applicable to the work to be performed.

- Contractor's Final Safety Plan
- Contractors Final Project Plan
- Contractors Final Schedule of Work
- Liability and workers' compensation insurance certificate.
- Performance and Payment Bonds.

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

d. Contractor's Project Manager shall give AURA's Technical Representative a minimum of five (5) days advance notice prior to commencing work. AURA, in its sole discretion, may waive this provision or reduce the notice period.

11. RISK OF LOSS

Contractor and its sub-contractors shall have and bear the risk of loss of materials and equipment left or stored on AURA's premises. Contractor and its subcontractors shall properly insure such materials and equipment against loss, damage, or destruction or other casualty. AURA shall not be responsible for loss, damage, or destruction of said materials and equipment while such materials are on AURA's premises.

12. INDEMNITY AND INSURANCE

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

b. Contractor shall, at its own expense, during the course of this Agreement, maintain in force at all times insurance to cover its obligations under this Article 13 and such policy shall contain an endorsement to eliminate any exclusions that might operate to prohibit the policy's coverage of the types of claims covered by this Article 13, and such endorsement shall specially cover the terms of this Article. Contractor shall name AURA as an additional insured under such contract of insurance.

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

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

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

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

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

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

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

d. AURA shall promptly notify the Contractor in writing of any Claim(s) brought against AURA for which Contractor may be responsible under Article 13. Upon its receipt of notification of Claim(s) by AURA, Contractor shall promptly take over and defend any such Claim(s) by tendering the Claim(s) to its insurance company for handling. Such insurance coverage shall be primary and shall be used for purposes of satisfying Contractor's obligations hereunder. In the event said Claim(s) is/are not covered by insurance or such insurance is exhausted, Contractor shall directly fulfill its obligations to indemnify, defend, and hold harmless under this Article 13 and take over and defend any such Claim(s). If Contractor fails to assume or maintain control of the defense of any Claim(s) (either through its insurance company or directly), AURA shall have the right to control such defense. In addition, AURA shall have the right and option to represent itself in defense of any such Claim(s) at any time if AURA, in its sole discretion, determines that its rights are not being appropriately defended by Contractor. If AURA controls such defense, Contractor agrees to pay to AURA, promptly upon demand, all reasonable attorneys' fees and other costs and expenses of defense. If Contractor assumes control of such defense and AURA reasonably concludes that Contractor and AURA have conflicting interests or different defenses available with respect to such proceeding, then the reasonable fees and expenses of counsel and the associated costs of such proceeding to AURA shall be considered and included as "expenses" for purposes of this Agreement.

e. Neither party hereto shall agree to any settlement of, or the entry of any judgment arising from, any third party claim involving the other without the prior written consent of the other, which shall not be unreasonably withheld, delayed, or conditioned.

ARTICLE 13. WARRANTY

a. Contractor warrants that the equipment and parts sold to AURA hereunder meets and satisfies all of AURA's specifications set forth in Attachment A.

b. Contractor warrants that the equipment sold to AURA hereunder, including all hardware and software will, upon delivery, be free from defects in material or workmanship for one year after delivery and installation. Further, Contractor warrants all labor related to the installation of the systems for a period of one year after installation. Products that are not manufactured by Contractor, but that are purchased from Contractor will be subject to the warranty provisions provided by the equipment manufacturer of such product(s), unless Contractor notifies AURA of any additional warranty provisions in writing. The obligation of Contractor under this warranty is the repair or replacement of any defective or malfunctioning parts with new or refurbished parts. If Contractor fails to replace or repair such parts, AURA's remedy shall be a refund of the price charged by the manufacturer of the part (whether that be Contractor or a third party) to its dealers for such parts as are proven to be defective. To obtain service under this warranty, AURA must bring the malfunction to the attention of Contractor or one of its authorized dealers during the one year warranty period.

c. The Implied Warranty of Merchantability and the Implied Warranty of Fitness for a Particular Purpose under Article 2 of the Hawaii Uniform Commercial Code are hereby implied in and applicable to the sale of the equipment by Contractor hereunder to AURA.

d. Contractor warrants that its performance of the work, including the selection of the equipment to meet AURA's needs and the labor performed in the installation of said equipment, will be carried out with that standard of care, skill, and diligence normally provided by a professional organization in the performance of similar services. Contractor further warrants that the performance of subcontractors at any tier, or any other person assigned by it under this Agreement, shall be in accordance with sound practice and professional standards of its trade and the requirements of this Agreement. If any portion of the services supplied fails to comply with this warranty, and Contractor is so notified in writing within one (1) calendar year after completion of this Agreement, Contractor will correctly perform such portion of the services at its own expense or, at AURA's option, will refund the amount of the compensation paid for such portion.

ARTICLE 14. CHANGES

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

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

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

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

ARTICLE 15. TIME IS OF THE ESSENCE

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

ARTICLE 16. DELAYS

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

ARTICLE 17. FORCE MAJEURE

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

ARTICLE 18. SUSPENSION OF THE WORK

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

ARTICLE 19. TERMINATION

a. Termination for Default/Cause

(i) If Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, AURA may notify Contractor in writing of the non-performance, and if not promptly corrected within the time specified, AURA may terminate Contractor's right to proceed with this Contract or such part of this Contract as to which there has been delay or a failure to properly perform. The Contractor shall continue performance of the Contract to the extent it is not terminated, and shall be liable for excess costs incurred by AURA in re-procuring similar goods or services elsewhere and excess costs incurred in AURA's operation because of any resulting delay. Payment for completed services performed and accepted shall be at the price(s) provided in this Contract.

(ii) AURA may withhold amounts due to Contractor as AURA deems to be necessary to reimburse itself for the excess costs incurred in curing, completing, or procuring similar goods and/or services and for excess costs incurred in AURA's operation because of the breach.

(iii) If, after termination of the Contractor's right to proceed under this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

(iv) No failure by AURA to insist upon the performance of any of the terms and conditions of this Agreement shall be construed as a waiver or relinquishment of any rights under this Agreement, and the obligation of the Contractor to comply with the terms and conditions of this Agreement shall continue in full force and effect.

b. Termination for Convenience

AURA or Contractor may terminate this Contract in whole or in part, for convenience. Either Party shall give written notice of termination specifying the part of the Contract terminated or when termination becomes effective. Upon receipt of the notice of termination, the Contractor shall incur no further obligations, except to the extent necessary to mitigate costs of performance. The Contractor shall also terminate outstanding orders and any lower-tier subcontracts as they relate to the terminated work, and shall settle the liabilities and claims arising out of the termination of any subcontracts and orders connected with the terminated work. The Contractor shall submit a final invoice including costs associated with the closeout of this Contract. Regardless of any other provisions, the amount of the termination liability under this paragraph shall not exceed the amount of the price provided in this Contract plus a reasonable cost for settlement expenses.

ARTICLE 20. INDEPENDENT CONTRACTOR

In performing services under this Agreement, the Contractor shall be deemed an independent contractor and shall not act as nor be an agent or employee of AURA. As an independent contractor, the Contractor will be solely responsible for determining the means and methods of performing the

construction/professional and/or technical services described in Article 1, and shall have complete charge and responsibility for persons employed by Contractor and engaged in the performance of the specified Work. All of the Contractor's activities will be at its own risk, and Contractor is hereby given notice of this responsibility for making arrangements to guard against physical, financial, and other risks as appropriate. Contractor shall observe and abide by all applicable laws and regulations, including, but not limited to, those of AURA relative to conduct on its premises.

ARTICLE 21. SMALL AND SMALL DISADVANTAGED SUBCONTRACTING

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

ARTICLE 22. ASSIGNMENT

This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto, but may not be voluntarily assigned in whole or in part by either party without the prior written consent of the other party, provided, however, that AURA may assign this Agreement to the United States of America without the permission of the Contractor. Further, unless this Agreement is assigned to the Government, it does not bind or purport to bind the National Science Foundation or the United States of America. AURA may assign its rights under this agreement to either the National Science Foundation or to an organization succeeding it as the operator of the Gemini Observatory.

ARTICLE 23. COMPLIANCE WITH LAWS AND REGULATIONS

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

ARTICLE 24. AUDIT AND AVAILABILITY OF RECORDS

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

ARTICLE 25. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All matters within the scope of the Federal Arbitration Act of the United States (9

U.S.C. §§1 et seq.) shall be governed by it. The place of arbitration shall be Tucson, Arizona. The arbitrator shall have the right to award or include in its award any relief that he or she deems proper in the circumstances, including without limitation, money damages (with interest on unpaid amounts from date due), specific performance, and injunctive relief. The arbitrators shall not have the authority to award exemplary, punitive, or special damages. The award and decision of the arbitrator shall be conclusive and binding upon all parties hereto, and judgment upon the award may be entered in any court of competent jurisdiction. Notwithstanding anything to the contrary contained herein, each party hereto shall have the right in a proper case to obtain temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction, provided, however, that the parties agree to contemporaneously submit their dispute for arbitration on the merits as provided herein.

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

ARTICLE 26. SURVIVAL

The provisions set forth in Articles 3, 4, 12, 13, 23, 24, 25, 26, 32, and 33 of this Agreement shall survive the termination or expiration of the term of this Agreement.

ARTICLE 27. ORDER OF PRECEDENCE

In the event of conflict among the provisions of any of the documents described in Article 1, interpretation of this Agreement shall be governed in the following descending order of priority: 1) the Articles of this Sub-Award; 2) the Statement of Work/Technical Specifications set forth in Attachment A; 3) the AURA Fixed-Price Contract: Terms and Conditions Provisions set forth herein; and 4) the Bid from Contractor received on xxxxxxxx, 2015, set forth in Attachment B.

ARTICLE 28. SEVERABILITY

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

ARTICLE 29. ENTIRE AGREEMENT

This Agreement, together with any addenda and amendments relating hereto, constitutes the entire agreement of the Parties, and there are no other representations, promises, agreements, conditions, or understandings, either oral or written, between the Parties other than as set forth herein. Any amendments, alterations, or modifications to this agreement must be in writing and signed by the Parties to this agreement to be effective.

ARTICLE 30. AUTHORITY

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

ARTICLE 31. INTEGRATION

This Agreement, together with any addenda and amendments relating hereto, sets forth the entire understanding between the parties and supersedes all prior or contemporaneous agreements, representations,

and understandings between the parties with respect to the subject matter of this Agreement. This Agreement may only be amended in a writing signed by both parties hereto.

ARTICLE 32. APPLICABLE LAW

a. This Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of Hawaii without regard to its conflict of law rules.

b. The work performed by the Contractor must comply with federal law and any other laws and/or ordinances that may be applicable to the work to be performed.

ARTICLE 33. NOTICES

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

For AURA:

Karen Godzyk, Contracts Officer
AURA Inc.
950 North Cherry Avenue
Tucson, AZ 85719
Telephone: 520.318.8357 Fax: 520.318.8456
Email: KGodzyk@aura-astronomy.org

For CONTRACTOR:

Telephone: . _____
Fax: . _____
Email: _____

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

ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.

Suzanne Baron-Helming
Procurement Manager

Date

CONTRACTOR

By: _____ **Date**

Title: _____

Fixed-Price Contract: Terms and Conditions

Definitions.

- (a) "FAR" refers to the Federal Acquisition Regulations which can be found at: <http://www.acquisition.gov/far/>
- (b) "AURA" refers to the Association of Universities for Research in Astronomy, Inc., an Arizona Corporation.
- (c) The term "this agreement" refers to this contract.
- (d) The term "Contractor" refers to the Contractor as defined in the Main Document.

COMMUNICATION. All communications concerning administration of this agreement must be furnished solely to the AURA Contracts Officer at the address given in this agreement. Communications of a technical nature only may be directed to the AURA Technical Representative designated by the AURA Contracts Officer.

TECHNICAL DIRECTION. The Technical Representative identified by the AURA Contracts Officer is authorized to provide technical information needed by Contractor, but is not authorized to direct Contractor to do anything that will affect the price, schedule, requirements, or scope of the work or that may give rise to a claim for extra costs or schedule delay. If the Technical Representative, or anyone at AURA, gives Contractor any direction that will result in a change to the price, schedule, requirements, or scope of work, or that may give rise to a claim for extra costs or schedule delay contractor, shall not implement the direction but shall instead contact the AURA Contracts Officer and request guidance on how to proceed.

AMENDMENTS AND CHANGE ORDERS. (a) Nothing in this agreement, including the scope or qualities of the services or goods provided, may be modified except by means of a written document (amendment or change order) signed by the AURA Contracts Officer and accepted by the contractor. Verbal agreements or direction from anyone other than the AURA Contracts Officer to modify or add work or requirements are void; if anyone at AURA gives contractor any direction that will result in a change to the price, schedule, requirements, or scope of work, or which may give rise to a claim for extra costs or schedule delays, contractor shall not implement the direction but shall instead contact the AURA Contracts Officer and request guidance on how to proceed.

(b) An amendment describes the modification and the agreed price adjustment and is signed by both contractor and the AURA Contracts Officer.

(c) A change order is issued and signed by the AURA Contracts Officer and describes the modification to the scope of work while leaving the costs to be determined later. All change orders shall be performed by contractor on a time and materials basis using the hourly rates for personnel and the overhead charges on purchased materials and services listed in the main body of the agreement or provided to AURA upon request prior to commencing work on the change order. Claims shall be submitted on change orders within 30 days after the change order work is completed and shall contain an itemization of labor hours by worker category and purchased goods/services. AURA shall review change order claims promptly and if there is no dispute prepare a contract amendment which closes out the change order by modifying the agreement price and scope of work to include the change order.

COPYRIGHTABLE MATERIAL. (a) The term "Subject Writing" refers to any copyrightable material which is produced by contractor in the course of performing the work under this agreement or which otherwise arises out of the work and which is either delivered to AURA or is distributed to any persons other than contractor's personnel and agents. Subject Writings include such items as drawings, documents, reports, books, journal articles, software, databases, sound recordings, photographs, artwork, and videotapes.

(b) Except as otherwise specified in this agreement, the contractor may own or permit others to own the copyright in all Subject Writings. Contractor agrees that if it or anyone else does own copyright in a Subject Writing, then for each Subject Writing: (1) AURA, and any subsequent organization operating the Gemini Observatory, shall have nonexclusive, nontransferable, irrevocable, royalty-free license to exercise throughout the world all rights provided by copyright for purposes related to operating the Gemini Observatory; and (2) the parties to the Gemini Agreement shall have nonexclusive, nontransferable, irrevocable, royalty-free license to exercise throughout the world all rights provided by copyright for research purposes. These licenses shall include the rights to reproduce, prepare derivative

works, distribute (but not sell) copies to the public, and perform publicly and display publicly, by or on behalf of the license holder.

(c) The contractor agrees to acquire, through written agreement or an employment relationship, the ability to comply with the requirements of the preceding paragraphs. The contractor further agrees that any transfer of copyright or any other rights to a Subject Writing, by it or anyone whom it has allowed to own such rights, will be made subject to the requirements of this section.

(d) Except as provided otherwise in this agreement, there shall be no confidentiality restrictions on Subject Writings and AURA may disclose any of them to any person or organization.

(e) Contractor may place restrictions on disclosure of proprietary information acquired by contractor prior to the date of this Contract that was not developed for any purposes related to the Gemini Observatory (collectively, the "Proprietary Information"), provided, however, that AURA, and any successor operator of the Gemini Observatory shall be permitted to disclose Proprietary Information to its employees and agents for purposes of Gemini Observatory operations. Material shall only be considered to be "Proprietary Information" if it is clearly marked as such by Contractor and otherwise meets the definition given in this paragraph.

ELECTRONIC AND FAX SIGNATURES; WRITTEN COMMUNICATIONS. (a) Documents relating to this agreement may be effectively signed by either: (1) Electronically signing a PDF file using the Adobe Acrobat Digital Signature Tool; or (2) Signing a hard copy and then either faxing it to the recipient or scanning it and emailing it to the recipient as a scanned document; or (3) Sending an original hard-copy.

(b) When this agreement requires that something be "in writing" an email communication is sufficient to meet this requirement.

PRICES AND PAYMENT LIMIT. Except as specifically noted, the prices given in this agreement include all charges related to the goods or services provided, including, but not limited to storage, packing, transportation, taxes, overhead, indirect costs, etc. AURA shall not be obligated to reimburse contractor for any costs in addition to the agreed price unless such costs are specifically listed in this agreement.

INDEMNIFICATION. (a) To the extent permitted by law, contractor shall defend, indemnify, and hold harmless AURA, its directors, officers, successors, employees, and visitors, from any claim, loss, damage, or expense (including reasonable attorney's fees), including any incidental or consequential damages, directly or indirectly arising out of:

(1) Any infringement or claim of infringement of patents, trade secrets, copyright, or trademark by reason of the use of the goods or services purchased under this agreement except for goods fabricated to AURA's detailed design;

(2) Any act or omission by the contractor, or its employees, agents, subcontractors, or assignees arising out of or in connection with performance of services ordered by this agreement.

(b) These indemnity obligations will survive the expiration or termination of this agreement.

CHOICE OF LAW. The laws of the State of Hawaii, without regard to conflict of laws provisions, shall govern the formation, performance, and legal enforcement of this agreement, and venue for any judicial action shall be Honolulu, Hawaii.

INDEPENDENT CONTRACTOR. The contractor is an independent contractor and not an agent or employee AURA. Contractor has no authority to bind AURA to any agreements or liability except as expressly set forth herein. Contractor shall be solely responsible for the acts of contractor, its employees, and agents.

TERMINATION FOR DEFAULT/CAUSE. (a) If the contractor refuses or fails to timely perform any of the provisions of this agreement with such diligence as will ensure its completion within the time specified in this agreement, AURA may notify the contractor in writing of the non-performance, and if not promptly corrected within the time specified, AURA may terminate the contractor's right to proceed with this agreement or such part of this agreement as to which

there has been delay or a failure to properly perform. The contractor shall continue performance of the agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere and excess costs incurred in AURA's operation because of any resulting delay. Payment for completed services performed and accepted shall be at the price(s) provided in this agreement.

(b) AURA may withhold amounts due to the contractor as AURA deems to be necessary to reimburse itself for the excess costs incurred in curing, completing, or procuring similar goods and services and excess costs incurred in AURA's operations because of the breach.

(c) The contractor shall not be in default by reason of any failure in performance of this agreement in accordance with its terms if such failure arises out of acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.

(d) If after termination of the contractor's right to proceed under this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

TERMINATION FOR CONVENIENCE. AURA may terminate this agreement in whole or in part, for its convenience. AURA shall give written notice of the termination to the contractor specifying the part of the agreement terminated and when termination becomes effective. Upon receipt of the notice of termination, the contractor shall incur no further obligations except to the extent necessary to mitigate costs of performance. The amount due to contractor upon termination shall be calculated as described in FAR 52.249-5 (Educational and Other Nonprofit Institutions). Regardless of any other provisions, the amount of the termination liability under this paragraph shall not exceed the amount of the price provided in this agreement plus a reasonable cost for settlement expenses.

PUBLICITY. Contractor shall not publicize or advertise in any manner anything relating to this agreement without getting prior written approval from AURA for each publicity/advertising item. AURA may require acknowledgements of its sponsors as a condition of approval.

COMPLETE AGREEMENT/WAIVER. This agreement is the exclusive expression of the parties' agreement and replaces all prior understandings, whether written or verbal. The terms of this agreement may not be altered or explained by course of dealing, course of performance, trade custom, or consistent additional terms. A course of performance by the parties which is inconsistent with the terms of this agreement shall not constitute a modification or waiver of those terms.

CONSEQUENCES OF BREACH. AURA's operation will suffer negative consequences and additional costs if the deliverable goods/services do not exactly meet the specifications and schedule given in this agreement.

OSHA AND MSDS SHEETS. All equipment and materials used in the performance of this agreement must conform to the standards required by the William-Steiger Occupational Safety and Health Act of 1970. Bidders must furnish Material Safety Data Sheets (MSDS) for any regulated chemicals, equipment or hazardous materials at the time of delivery.

EQUAL EMPLOYMENT OPPORTUNITY. Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

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

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

LABOR DISPUTES. If the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this agreement, the Contractor shall immediately give notice, including all relevant information, to AURA. This provision shall be included in all subcontracts issued by contractor related to the work.

PUBLICATIONS.

(a) The contractor is responsible for assuring that an acknowledgment of NSF support is made:

1. In any publication (including World Wide Web pages) of any material based on or developed under this contract, in the following terms: "This material is based upon work supported by the National Science Foundation under Cooperative Agreement No. AST0525280."
2. NSF support also must be orally acknowledged during all news media interviews, including popular media such as radio, television and news magazines.

(b) The Contractor is responsible for assuring that every publication of material (including World Wide Web pages) based on or developed under this award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "Any opinions, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Science Foundation."

(c) The Contractor is responsible for assuring that two copies of every publication of material based on or developed under this award, clearly labeled with the cooperative agreement number and other appropriate identifying information, are sent to the cognizant NSF Program Officer promptly after publication.

(d) All reports and publications resulting from this Contract are encouraged to use the metric system of weights and measures.

CLEAN AIR AND WATER ACTS. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

BYRD ANTI-LOBBYING AMENDMENT. By signing this contract contractor certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of Gemini, any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining this contract or any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to AURA.

ACCESS TO RECORDS. AURA, the NSF, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to this agreement for the purpose of making audits, examinations, excerpts and transcriptions.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. In performing the work contractor shall comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in

excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

NONDISCRIMINATION.

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

(b) By signing this agreement, Contractor certifies that it has filed an Assurance of Compliance with Title VI of the Civil Rights Act of 1964 document with either the NSF or U.S. Department of Health and Human Services, as is required under the NSF Grant General Conditions (GC-1). If Contractor has not filed such an Assurance of Compliance please contact the AURA Contracts Officer for the required form.

(c) Contractor certifies that during the term of this contract it will comply with Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794] and NSF's implementing regulations [45 CFR 605].

(d) Contractor agrees to comply with the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] as implemented by the Department of Health and Human Service regulations at 45 CFR 90 and the regulations of NSF at 45 CFR 617.

PATENT RIGHTS (APRIL, 1992)

(a) Definitions.

1. *INVENTION* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the USC, to any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 USC §§2321 et seq.).
2. *SUBJECT INVENTION* means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.
3. *PRACTICAL APPLICATION* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.
4. *MADE* when used in relation to any invention means the conception or first actual reduction to practice of such invention.
5. *NON-PROFIT ORGANIZATION* means a domestic university or other institution of higher education or an organization of the type described in Section 501(c)(3) of the Internal Revenue Code of 1954 (26 USC §501(c)) and exempt from taxation under Section 501(a) of the Internal Revenue Code (26 USC §501(a)) or any domestic non-profit scientific or educational organization qualified under a State non-profit organization statute.
6. *NSF* means the National Science Foundation, an agency of the federal government of the United States of America.

(b) Allocation of Principal Rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 USC §203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U. S. the subject

invention through-out the world. With respect to any subject invention in which the Contractor retains title, the non-U.S. Parties to the Gemini Agreement shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced on their behalf the subject invention through-out the world for research purposes.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Contractor.

1. The Contractor will disclose each subject invention to AURA within two months after the inventor discloses it in writing to Contractor personnel responsible for the administration of patent matters. The disclosure to AURA shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to AURA, the Contractor will promptly notify AURA of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
2. The Contractor will elect in writing whether or not to retain title to any such invention by notifying AURA within two years of disclosure to AURA. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U. S., the period for election of title may be shortened by NSF to a date that is no more than 60 days prior to the end of the statutory period.
3. The Contractor will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U. S. after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.
4. Requests for extension of the time for disclosure to NSF, election, and filing under subparagraphs 1, 2, and 3 may, at the discretion of NSF, be granted.

(d) Conditions When the Government May Obtain Title. The Contractor will convey to NSF, upon written request, title to any subject invention:

1. If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph c. above, or elects not to retain title; provided that NSF may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times;
2. In those countries in which the Contractor fails to file patent applications within the times specified in paragraph c. above, but prior to its receipt of the written request of NSF, the Contractor shall continue to retain title in that country; or
3. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Contractor.

1. The Contractor will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the subject invention within the times specified in paragraph c. above. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of NSF

except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

2. The Contractor's domestic license may be revoked or modified by NSF to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR §404. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of NSF to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
3. Before revocation or modification of the license, NSF will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by NSF for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR §404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Contractor Action to Protect Government's Interest.

1. The Contractor agrees to execute or to have executed and promptly deliver to NSF all instruments necessary to: (i) establish or confirm the rights the Government has throughout the world in those subject inventions for which the Contractor retains title; and (ii) convey title to NSF when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.
2. The Contractor agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph c.1 above. The Contractor shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U. S. or foreign statutory bars.
3. The Contractor will notify NSF of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.
4. The Contractor agrees to include, within the specification of any U. S. patent application and any patent issuing thereon covering a subject invention, the following statement: This invention was made with Government support under (identify the contract) awarded by the National Science Foundation. The Government has certain rights in this invention.
5. The Contractor or its representative will complete, execute and forward to NSF a confirmation of a License to the U. S. Government and the page of a United States patent application that contains the Federal support clause within two months of filing any domestic or foreign patent application.

(g) Subcontracts. The Contractor will include this Patent Rights clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work. The subcontractor will retain all rights provided for the Contractor in this Patent Rights clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(h) Reporting on Utilization of Subject Inventions. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the

status of development, date of first commercial sale or use, gross royalties received by the Contractor and such other data and information as NSF may reasonably specify. The Contractor also agrees to provide additional reports in connection with any march-in proceeding undertaken by NSF in accordance with paragraph j. of this Patent Rights clause. As required by 35 USC §202(c)(5), NSF agrees it will not disclose such information to persons outside the Government without the permission of the Contractor.

(i) Preference for United States Industry. Notwithstanding any other provision of this Patent Rights clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U. S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U. S. However, in individual cases, the requirement for such an agreement may be waived by NSF upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U. S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights. The Contractor agrees that with respect to any subject invention in which it has acquired title, NSF has the right in accordance with procedures at 37 CFR §401.6 and NSF regulations at 45 CFR §650.13 to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Contractor, assignee, or exclusive licensee refuses such a request, NSF has the right to grant such a license itself if NSF determines that:

1. Such action is necessary because the Contractor or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
2. Such action is necessary to alleviate health or safety needs that are not reasonably satisfied by the Contractor, assignee, or their licensees;
3. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensee; or
4. Such action is necessary because the agreement required by paragraph i. of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U. S. is in breach of such agreement.

(k) Special Provisions for Contracts with Non-profit Organizations. If the Contractor is a non-profit organization, it agrees that:

1. Rights to a subject invention in the U. S. may not be assigned without the approval of NSF, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
2. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee coinventors (when NSF deems it appropriate) when the subject invention is assigned in accordance with 35 USC §202(e) and 37 CFR §401.10;
3. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and
4. It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to

give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph.

(l) Communications. All communications required by this Patent Rights clause should be sent to:

Patent Assistant
Office of the General Counsel
National Science Foundation
4201 Wilson Boulevard
Arlington, VA 22230

ATTACHMENT A: SCOPE OF WORK/TECHNICAL SPECIFICATIONS

Contractor shall provide all labor, materials, equipment, and tools necessary to permit, procure, install, and interconnect the 94.8 kW Net Energy Meter PV array system.

The system shall be installed in accordance with Contract technical drawings, requirements, and specifications, Hawaii County Code, and a Net Energy Metering (NEM) Agreement between Hawaii Electric Company (HELCO), Contractor, and Gemini/AURA.

Technical Specifications: The engineered system consists of the equipment identified below:

Item Description	Manufacturer	Product Name/ Model#	# units	Tech specs
(Solar panels)				
(Inverters)				
(Roof-to-module connectors)				
Fasteners				
Electrical Enclosures				
(others)				

No substitutions to identified equipment will be made without prior written approval from AURA.

Contractor shall:

1. Prepare necessary County of Hawaii permit documents
2. Develop and submit to AURA 95% submittal drawings for review and approval
3. Prepare final County of Hawaii permit documents
4. Submit to County of Hawaii a PV system permit application including necessary permit drawings
5. Submit to AURA Gemini one wet-signed permit drawing set (that AURA shall use to seek necessary University of Hawaii at Hilo approval in parallel to the County permit process).
6. Receive from County of Hawaii a PV system installation permit.
7. Apply for and receive a County Building Permit
8. Submit to AURA and receive approval of product info and shop drawing submittals including
 - a. Inverter rack layout and mounting details
 - b. Conduit runs, raceways, fittings, and mounting details
 - c. Wall penetrations details
 - d. All electrical equipment including PV panels, inverters, disconnects, and enclosures
4. Procure all necessary hardware
5. Install system
6. Notify and participate in a successful Hawaii County inspection
7. Submit required documentation to secure final HELCO NEM approval.
8. Notify HELCO for inspection upon County permit completion
9. Complete any other tasks, documents, or requirements that may be necessary to deliver a complete and operating system

ATTACHMENT B: CONTRACTOR'S BID
(To be included in final contract)