



Department of Energy

Brookhaven Site Office

P.O. Box 5000

Upton, New York 11973

Mr. Michael Furey
Brookhaven Science Associates, LLC
Brookhaven National Laboratory
Upton, New York 11973

JUN 8 2012

Dear Mr. Furey:

SUBJECT: TECHNICAL SERVICES AGREEMENT

This letter is to approve the Technical Services Agreement that you submitted on June 6, 2012 specifically requesting an increase to our June 27, 2008 maximum cost approval of \$100,000 to \$150,000. At this time please incorporate it into the "Work for Others Non Federal Sponsors Process Guidelines- Revision B, Model G of Appendix D."

If you have any questions, please do not hesitate to contact Jennifer Beliveau of my staff at extension 3438.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Gordon".

Robert Gordon, Director
Business Management Division
Contracting Officer



Department of Energy

Brookhaven Site Office
P.O. Box 5000
Upton, New York 11973

RECEIVED

JUN 30 2008

OFFICE OF
INTELLECTUAL PROPERTY

JUN 27 2008

Mr. Michael Furey
Brookhaven Science Associates, LLC
Brookhaven National Laboratory
Upton, New York 11973

Dear Mr. Furey:

SUBJECT: TECHNICAL SERVICES AGREEMENT

This letter is to approve the Technical Services Agreement that you submitted on June 18th. At this time please incorporate it into the "Work for Others (WFO) Non Federal Sponsors Process Guidelines – Revision B, Model G of Appendix D."

If you have any questions, please do not hesitate to call Kim Nekulak of my staff on extension 7439.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert P. Gordon".

Robert P. Gordon
Contracting Officer

BROOKHAVEN
NATIONAL LABORATORY

Building 185
P.O. Box 5000
Upton, NY 11973-5000
Phone 631 344-2103
Fax 631 344-3729
mfurey@bnl.gov

managed by Brookhaven Science Associates
for the U.S. Department of Energy

www.bnl.gov

June 18, 2008

Mr. Robert Gordon, Director
Business Management Division
U.S. Department of Energy
Brookhaven Site Office
Upton, NY 11973

RE: Technical Services Agreement

Dear Bob:

Brookhaven wishes to amend our "Work for Others (WFO) Non Federal Sponsors Process Guidelines – Revision B" by incorporating the enclosed Technical Services Agreement as Model G of Appendix D.

It is our intention to utilize this agreement for WFO programs that are funded by non-federal sponsors and which satisfy the following criteria:

- ◆ Technical service utilizes BNL's unique capabilities which are not readily available in the private sector
- ◆ Technical service does not involve research and development activity
- ◆ Technical service will not result in the creation of intellectual property
- ◆ Sponsor will not control information generated by the technical service and will not treat resulting material or data as proprietary information
- ◆ Sponsor will not furnish equipment, tools, or materials to assist in performance of technical service.
- ◆ Sponsor will not be a foreign organization
- ◆ Maximum estimated cost for technical service is \$100,000
- ◆ Technical service shall be completed in one year or less

The proposed Technical Service Agreement was developed based on the Argonne National Laboratory's Technical Service Agreement (Attachment A) and the BNL "Model A" Research Agreement (Attachment B). The articles contained in the proposed Technical Service Agreement (TSA) are identical to the articles contained in the Argonne agreement

and the language for each article reflects either the Argonne or the Model A language as follows:

Article I – Parties to the Agreement - This article reflects the Model A language with one revision. In the last sentence, “when conducting research for the Sponsor” has been revised to “when providing goods, services, products, processes, materials, or information to the Sponsor”

Article II – Term of the Agreement – Reflects Argonne language

Article III – Costs and Payment – Reflects Model A language from articles III (Costs) and IV (Funding and Payment)

Article IV – Disclaimer – Reflects Model A language

Article V – General Indemnity – Reflects Model A language including Options 1 and 2

Article VI – Product Liability Indemnity – Reflects Model A language including Option 1, 2 and 3

Article VII – Intellectual Property Indemnity – Limited – Reflects Model A language including Option 1

Article VIII – Patents – Reflects Argonne language (Article IV)

Article IX – Use of Information – Reflects Argonne language

Article X – Export Control – Reflects Argonne language


Article XI – Termination – Reflects Model A language

Article XII – Sponsor’s Purchase Order – Reflects Argonne language

We are proposing this Technical Services Agreement as an additional contracting option in the WFO non-federal program. Proposed technical service projects would be subject to all the requirements of our current WFO process, DEAR 970-52171-1 and DOE-G-481.1-1, and would require approval from DOE-BHSO prior to entering into a TSA.

Please feel free to contact me if you have any questions or comments.

Sincerely,



Michael J. Furey
Manager, Research Partnerships

TECHNICAL SERVICES AGREEMENT

Between

BROOKHAVEN SCIENCE ASSOCIATES

Operating Brookhaven National Laboratory (BNL) Under
Prime Contract No. DE-AC02-98CH10886 for the U.S. Department of Energy

and

(Name of the Non-Federal Sponsor)

Article I. PARTIES TO THE AGREEMENT

Brookhaven Science Associates, hereinafter referred to as the "Contractor," has been requested by the **(Name of the Non-Federal Sponsor)**, hereinafter referred to as the "Sponsor," to perform the work set forth in the Statement of Work, attached hereto as Appendix A. It is understood by the Parties that the Contractor is obligated to comply with the terms and conditions of its Prime Contract with the United States Government (hereinafter called the "Government") represented by the United States Department of Energy (hereinafter called the "Department" or "DOE") when providing goods, services, products, processes, materials, or information to the Sponsor under this Agreement.

Article II. TERM OF THE AGREEMENT

The Contractor's estimated period of performance for completion of the work described in Appendix A is _____ months. This agreement shall be effective as of the date on which it is signed by the last of the Parties thereto.

Article III. COSTS AND PAYMENT

1. The Contractor's estimated cost for the work to be performed under this Agreement is \$_____. The budget set forth in Appendix A contains a detailed budget of estimated costs. The Contractor has no obligation to continue performance of the work at a cost in excess of its estimated cost, and the Sponsor shall not be liable for costs in excess of said amount without an amendment to the Agreement. The Contractor agrees to provide at least thirty (30) days' notice to the Sponsor if the actual cost to complete performance will exceed its estimated cost.

2. The Sponsor shall make an advance payment of \$_____ to cover the Contractor's costs incurred in the performance of the work described in this Agreement. The Contractor must receive the advance payment prior to commencement of work. Upon completion of work, or upon termination of this agreement, the Contractor shall promptly return to the Sponsor any portion of the advance payment that is unexpended.
3. BSA shall submit monthly invoices, within thirty (30) days following the end of the month, to:

(Insert Sponsor's Accounts Payable Point of Contact)

4. Payments shall be made by the Sponsor within thirty (30) days of receipt of a monthly invoice from the Contractor. Payments by the Sponsor shall be directed to:

Brookhaven National Laboratory
Accounts Receivable, Bldg. 400D
P.O. Box 5000
Upton, New York 11973-5000

Article IV. DISCLAIMER

THE GOVERNMENT AND THE CONTRACTOR MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS WORK FOR OTHERS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS. NEITHER THE GOVERNMENT NOR THE CONTRACTOR SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO SUCH RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS WORK FOR OTHERS AGREEMENT.

Article V. GENERAL INDEMNITY

The Sponsor agrees to indemnify and hold harmless the Government, the Department, the Contractor, and persons acting on their behalf from all liability, including costs and expenses incurred, to any person, including the Sponsor, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of the Agreement by the Government, the Department, the Contractor, or persons acting on their behalf, or arising out

of the use of the services performed, materials supplied, or information given hereunder by any person including the Sponsor, and not directly resulting from the fault or negligence of the Government, the Department, the Contractor, or persons acting on their behalf.

Option 1: If the Sponsor is a state government, a state agency, a state college or university, or a political subdivision of a state or an agency thereof, and such entity is limited by law from assuming all such indemnification obligations, the General Indemnity Article may begin with:

To the extent permitted by [name of State] law, the Sponsor...

Option 2: The General Indemnity is only required if one of the following conditions is relevant to the Agreement. If none of these conditions apply to the Agreement, this article may be deleted and this section will be titled **[Reserved]**.

- i. The Sponsor is providing material or equipment to the Contractor.
- ii. The Sponsor is sending its employees to BNL as part of the Statement of Work.
- iii. The Sponsor is directing that specific activities not normally performed by the Contractor be performed as part of the Statement of Work.

Article VI. PRODUCT LIABILITY INDEMNITY

Except for any liability resulting from any negligent acts or omissions of the Government or the Contractor, the Sponsor agrees to indemnify the Government and the Contractor for all damages, costs, and expenses, including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the Sponsor, its assignees, or licensees, which was derived from the work performed under this Agreement. In respect to this Article, neither the Government nor the Contractor shall be considered assignees or licensees of the Sponsor, as a result of reserved Government and Contractor rights. The indemnity set forth in this paragraph shall apply only if the Sponsor shall have been informed as soon and as completely as practical by the Contractor and/or the Government of the action alleging such claim and shall have been given an opportunity, to the maximum extent afforded by applicable laws, rules, or regulations, to participate in and control its defense, and the Contractor and/or Government shall have provided all reasonably available information and reasonable assistance requested by the Sponsor. No settlement for which the Sponsor would be responsible shall be made without the Sponsor's consent unless required by final decree of a court of competent jurisdiction.

Option 1: As an option to using the above language for product liability, a hold harmless provision may be substituted therefore, as follows:

Except for any liability resulting from any negligent acts or omissions of the Government or the Contractor, the Sponsor agrees to hold harmless the Government and the Contractor for all damages, costs, and expenses,

including attorney's fees, arising from personal injury or property damage occurring as a result of the making, using, or selling of a product, process, or service by or on behalf of the Sponsor, its assignees, or licensees, which was derived from the work performed under this Agreement.

Option 2: If the Sponsor is a state government, a State agency, a State college or university, or a political subdivision of a State or an agency thereof, and such entity is limited by law from assuming all such indemnification obligations, the product liability Article may begin with:

To the extent permitted by [name of State] State law and except for any liability resulting from any negligent acts or omissions...

Option 3: A Product Liability Indemnity provision may not be required in certain Agreements that involve the following situations. In these situations, this article may be deleted and this section will be titled [**Reserved**].

- i. It is determined that the results will be a product, process, or service unlikely to be commercialized (e.g., activity is limited to technical assistance). Circumstances must be such that they justify the exclusion of the product liability indemnity provision from the agreement. Such determinations will be made on a case-by-case basis and will be supported by facts indicating there is little or no potential risk of liability to the government or the contractor. The authority to make these determinations shall reside with BNL's Manager of the Office of Intellectual Property and Sponsored Research.
- ii. The results are to be placed totally in the public domain (i.e., no intellectual property protection for any of the results) and accompanied by a DOE-approved disclaimer.

Article VII. INTELLECTUAL PROPERTY INDEMNITY - LIMITED

The Sponsor shall indemnify the Government and the Contractor and their officers, agents, and employees against liability, including costs, for infringement of any United States patent, copyright, or other intellectual property arising out of any acts required or directed by the Sponsor to be performed under this Agreement to the extent such acts are not already performed at BNL. Such indemnity shall not apply to a claimed infringement that is settled without the consent of the Sponsor unless required by a court of competent jurisdiction.

Option 1: If the Sponsor is a state government, a state agency, a state college or university, or a political subdivision of a state or an agency thereof, and such entity is limited by law from assuming this indemnification, then this provision may begin with:

To the extent permitted by [name of State] law, the Sponsor...

Article VIII. PATENTS AND RIGHTS IN DATA

All work performed by the Contractor shall be in accordance with the requirements of the Prime Contract, as amended, and all rights in data and inventions made in the course of or under this Agreement will be in accordance with the terms of the Prime Contract.

Article IX. USE OF INFORMATION

The DOE shall have the right to use, without payment of any compensation, and information acquired by the DOE or the Contractor in connection with or as a result of the work hereunder, for any purpose.

Article X. EXPORT CONTROL

The Parties understand that materials and information resulting from the performance of this Agreement may be subject to export control laws, and that each Party is responsible for its own compliance with such laws.

Article XI. TERMINATION

Performance of work under this Agreement may be terminated at any time by either Party, without liability, except as provided above, upon giving sixty (60) days written notice to the other Party. The Contractor shall terminate this Agreement only when the Contractor determines, after direction from DOE, that such termination is in the best interest of the Government, provided however, that the Contractor shall have the right to terminate if the Sponsor shall have failed to advance the funds required by Article IV. In the event of termination, the Sponsor shall be responsible for the Contractor's costs (including closeout costs), through the effective date of termination, but in no event shall the Sponsor's cost responsibility exceed the total cost to the Sponsor as described in Article III, above.

Article XII. SPONSOR'S PURCHASE ORDER

Any terms and conditions appearing on Sponsor's Purchase Order shall have no force or effect. The above terms and conditions hereof are the only terms and conditions applicable to this transaction.

In witness whereof, the Parties hereto have executed this Agreement.

FOR BROOKHAVEN SCIENCE ASSOCIATES

Name Michael J. Furey

Title Manager, Research Partnerships

Date _____

FOR (Name of Non-Federal Sponsor)

Name _____

Title _____

Date _____