

Prepared by:
Max Main
Bennett Main Gubbrud & Willert, P.C.
618 State Street
Belle Fourche, SD 57717
Telephone 605.892.2011

AGREEMENT FOR TERMINATION OF EASEMENTS
AND
GRANT OF REPLACEMENT EASEMENT

THIS AGREEMENT FOR TERMINATION OF EASEMENTS AND GRANT OF REPLACEMENT EASEMENT (the “Agreement”) is entered into effective the _____ day of _____, 20____, by and between **HOMESTAKE MINING COMPANY OF CALIFORNIA** (“Homestake”), of 11457 Bobtail Gulch Street, Central City, South Dakota 57754, and **SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY** (“SDSTA”), a body corporate and body politic of the State of South Dakota, of 630 East Summit Street, Lead, South Dakota 57754. Homestake and the SDSTA sometimes are referred to in this Agreement individually as a “Party” and collectively as the “Parties.”

RECITALS

A. Homestake previously granted easements to SDSTA in an Easement Agreement dated effective October 5, 2015 (the “Easement Agreement”) and recorded in the Office of the Lawrence County, South Dakota Register of Deeds as Doc. # 2015-04399 (the “Prior Easements”). The Prior Easements and the lands affected thereby are described in Exhibit “A” attached hereto.

B. The Easement Agreement was amended by an Amendment No. 1 to Easement Agreement dated effective June 1, 2016 (the “Amendment”) and recorded in the Office of the Lawrence County, South Dakota Register of Deeds as Doc. # 2016-03292, and re-recorded as Doc. # 2016-03422. The lands covered by the Amendment are described on Exhibit “B” attached hereto.

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C. The Parties desire to partially terminate and modify the Prior Easements, the Easement Agreement, and the Amendment, with Homestake granting a replacement easement (the “Replacement Easement”) to SDSTA.

D. This Replacement Easement eliminates the Access and Conveyor Easements, and also eliminates the option of hauling rock on the Terraville Road to dump into the Open Cut. The Primary Easement, which is the area shown on Exhibits A and B labeled “Primary Easement”, continues, in effect except as modified and replaced as described and shown in Exhibits “C” and “D.”

E. All capitalized terms herein shall have the same meaning as in the Easement Agreement and in the Amendment, or as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the covenants contained herein, Homestake and SDSTA agree as follows:

1. Definitions. As used in this Agreement the following capitalized terms shall have the meanings as set forth below.

A. **“Applicable Laws”** means any local, state, provincial, territorial, national or federal laws, legislation, statutes, regulations, rules, treaties and orders or requirements of a court or any governmental authority that apply to the Property, or that otherwise relate to a Party’s rights or obligations under this Agreement, as such laws, ordinances, rules and regulations may be amended, modified or supplemented and in effect from time to time.

B. **“Arrangement for Disposal”** has the same meaning as given to that term in the case law interpreting Section 107(a)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607(a)(3).

C. **“Disposal”** has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601(29), and the regulations and agency guidance promulgated thereunder.

D. **“Environment”** means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources.

E. **“Environmental Laws”** means all Applicable Laws and all covenants running with the land that relate to the protection of health or the Environment whether now existing or hereafter adopted, including without limitation those that relate to the

existence, handling, manufacture, treatment, storage, disposal, use, generation, release, threatened release, discharge, refining or recycling of Hazardous Materials or reclaiming of real property, and all obligations relating to protection of the Environment arising out of any use relating to the Property. Without limiting the foregoing, Environmental Law include the Hazardous Materials Transportation Act (49 U.S.C. § 1801 et seq.), the Resource Conservation and Recovery Act of 1976, (42 U.S.C. § 6901 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. § 1251), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001, et seq.), the Occupational Safety and Health Act (26 U.S.C. § 651 et seq.), the Pollution Prevention Act of 1990 (42 U.S.C. § 13101 et seq.), the Atomic Energy Act of 1954, 68 Stat. 919, the Energy Reorganization Act of 1974, the Mine Safety and Health Act of 1977, the Uranium Mill Tailings Radiation Control Act (42 U.S.C. § 7901 et seq.), and all similar or additional federal, state, local or foreign statutes, all as amended, and all regulations promulgated thereunder, in each case as currently existing or as may hereinafter be promulgated.

F. “Environmental Permit” means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the SDSTA’s development, construction, equipping, use and/or operation of the Property.

G. “Environmental Risk Insurance” means a policy of insurance, underwritten by a reputable insurer with a security rating from A. M. Best of not less than A-VII, or another insurer approved in writing by Homestake in its sole discretion, that provides coverage for remediation and reclamation, bodily injury, property damage, contractual liability and defense costs arising out of or related to SDSTA’s activities on or associated with the Property: (i) risks associated with on-site and off-site cleanup costs, bodily injury and property damage claims relating to pre-existing and new environmental conditions, (ii) risks associated with past or future violations of Environmental Laws, and (iii) risks arising out of the SDSTA’s use, operation, reclamation, closure or remediation of the Property by, as applicable, the State of South Dakota, the SDSTA, and its or their representatives or by anyone else. Such insurance shall specifically include contractual liability coverage (including, in particular, coverage applicable to the contractual indemnifications given by the State of South Dakota and the SDSTA to Homestake and provide coverage for legal defense expenses paid or incurred concerning any claim potentially covered under such insurance. The Environmental Risk Insurance will contain no special limitations on the scope of coverage provided to Homestake.

H. “Hazardous Material” means any substance: (i) the presence of which requires reporting, investigation, removal or remediation under any Environmental

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Laws, including without limitation, mine tailings, waste dumps and other materials; (ii) that is defined as a “hazardous waste,” “hazardous substance” or “pollutant” or “contaminate” under any Environmental Laws; (iii) that is toxic, explosive, corrosive, flammable, ignitable, infectious, radioactive, reactive, carcinogenic, mutagenic or otherwise hazardous and is regulated under any Environmental Laws; (iv) the presence of which on a property causes or threatens to cause a nuisance upon the property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the property; (v) that contains gasoline, diesel fuel or other petroleum hydrocarbons; or (vi) that contains PCBs, asbestos or urea formaldehyde foam insulation.

I. “Liabilities” means all liabilities (whether contingent, fixed or unfixd, liquidated or unliquidated, or otherwise), obligations, deficiencies, demands, claims, suits, actions, causes of action, assessments, losses, costs, interest, fines, penalties, or damages, (including costs or expenses of any and all investigations or proceedings and reasonable fees and expenses of attorneys, accountants and other experts).

J. “Open Cut” means the open pit at the Homestake Mine in Lead, South Dakota.

K. “Property Donation Agreement” means the April 14, 2006 agreement the Parties entered relating to certain real and personal property located in and near Lead, South Dakota.

L. “Release” has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601(22), and the regulations and agency guidance promulgated thereunder, and which release is required to be reported to the relevant governmental authorities under Applicable Law.

2. Termination of Prior Easements, Easement Agreement and Amendment: The Parties hereby terminate the Prior Easements, the Easement Agreement, and the Amendment, effective as of the date of this Agreement.

3. Grant of Replacement Easement: Subject to the terms and conditions hereof, Homestake hereby grants to SDSTA a permanent Replacement Easement as described and illustrated in Exhibits “C” (which defines the “Property”) and “D” attached hereto for the Permitted Uses described herein.

4. Permitted Uses: SDSTA may only use the Replacement Easement for the purpose of disposing up to five million (5,000,000) ~~million~~ tons of rock excavated from the former Homestake gold mine located in and near Lead, South Dakota to facilitate the construction, enlargement, modification or maintenance of underground laboratory facilities and related support and infrastructure facilities; for access over and across the

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Replacement Easement; for a tunnel for a conveyor system; and for a conveyor system terminus and support structure (the “Permitted Uses”).

5. Easement Conditions:

A. Permits. Prior to commencing any activities authorized by the Replacement Easement, including, without limitation, use and occupancy of the Property for the Permitted Uses, SDSTA shall obtain all necessary Environmental Permits as well as all other consents, approvals and actions of, filings with, and notices to any governmental authority or third party necessary to permit the SDSTA to use the Replacement Easement and Property. Further, SDSTA shall conduct engineering analysis, geologic mapping and characterization, and all other studies of the Environment required for any Environmental Permit or other governmental or third party consent. Activities authorized by the Replacement Easement may only be commenced after SDSTA provides to Homestake copies of the Environmental Permits and any other necessary permits and approvals.

B. Engineering Study-High Wall Stability. SDSTA has caused an engineering study to be completed assessing the impact on high wall stability of the Open Cut by the placement of approximately up to eight hundred seventy-five thousand (875,000) tons of rock on the Replacement Easement. Homestake has approved the engineering study, which indicated an improved stability following material placement. Prior to placing more than approximately eight hundred seventy-five thousand ~~1,000~~(875,000) tons of rock on the Replacement Easement, SDSTA shall cause an additional engineering study to be completed to determine if the placement of the additional quantity of excavated rock will adversely impact high wall stability of the Open Cut. A written report summarizing the additional study shall be furnished to Homestake. The additional quantity of excavated rock may only be placed on the Replacement Easement after Homestake, in its sole discretion, acting reasonably, approves the additional engineering study and report.

C. Further Engineering, Geologic, Reclamation, and Other Studies. Prior to commencing any activities authorized by the Replacement Easement, including, without limitation, use and occupancy of the Property for the Permitted Uses, SDSTA shall conduct other studies required by any governmental authority, or such other studies necessary to demonstrate that use of the Open Cut, including the deposition of all materials and substances in the Open Cut, the Property, and the surrounding Environment for Permitted Uses will not have an unreasonably negative impact. These studies will include, without limitation, engineering, geologic, reclamation, transportation (on or off Property), archeology, or historic preservation studies. Such studies must be approved in writing by Homestake in its sole discretion, acting reasonably, before SDSTA may use or occupy the Property for the Permitted Uses. Such approval shall not relieve SDSTA from its

responsibility for all Liabilities or its obligation to indemnify Homestake, all as set forth in this Agreement.

D. General Conditions.

(1) Excavated rock generated by SDSTA may be brought to the surface and delivered to the Replacement Easement or delivered from the underground directly to the Replacement Easement. Excavated rock brought to the surface will be transported to the Replacement Easement via truck, a conveyer system or some combination of the two. SDSTA will manage and pay for the design, construction, maintenance, and demolition of any new installations or modifications of or within the Replacement Easement to facilitate transportation of excavated rock to the Replacement Easement.

(2) SDSTA shall use reputable professional engineering firms to provide designs for such installations, which designs shall be subject to Homestake's review and approval. Homestake agrees to expedite its review of design documents and in any event to respond with approval or requests for changes within 60 days of submission of a design document.

(3) A written report summarizing the chemical, physical, and geological characteristics of the excavated rock material proposed to be deposited on the Replacement Easement shall be furnished to Homestake. Excavated rock may only be deposited on the Replacement Easement after Homestake, in its sole discretion, acting reasonably, approves the characteristics and report.

(4) SDSTA shall be responsible for all environmental controls associated with the transportation and disposal of excavated rock hereunder.

(5) Excavated rock shall be placed such that all water drainage from the material placed by SDSTA flows to the SDSTA's facilities, to be treated by SDSTA before discharged to the environment.

(6) Quantities of placement shall be limited by physical space availability only, with expected quantities in the range of eight hundred seventy-five thousand (875,000) to five million (5,000,000) ~~5 million~~ tons, subject to the requirements of this Agreement, including, without limitation, the additional study under Section 5.B for placement of material in excess of approximately eight hundred seventy-five thousand (875,000) tons.

(7) If the conveyor system is not reasonably anticipated to be used within 10 years, it shall be removed from the Replacement Easement by SDSTA. Removal

shall include the removal of the conveyor system, conveyor system terminus, conveyor system support structure, tunnel structure, and tunnel, including backfilling of the tunnel space. Upon removal of the foregoing facilities and structures, the areas where they were located shall be returned to a similar or better condition than prior to commencement of work.

E. Non-Exclusive. The Replacement Easement granted herein is non-exclusive, and Homestake reserves the right to enter the Replacement Easement, at its own risk. Homestake cannot unreasonably interfere with the SDSTA's Permitted Uses under this Replacement Easement.

6. Health and Safety Plan: Prior to SDSTA commencing any work or activities on Homestake real property, SDSTA and Homestake will develop a site-specific health and safety plan, to be approved by Homestake, in its sole discretion. The health and safety plan will include all of Homestake's safety, reporting and emergency protocols. SDSTA will comply with instructions from Homestake employees regarding health and safety matters. It is the responsibility of SDSTA to contact One Call to ensure all utilities are located.

7. Insurance, Limitation of Liability, and Indemnity:

A. Employment Insurance. SDSTA shall comply with all state and federal social security and unemployment insurance laws.

B. Insurance. SDSTA, from the time of commencement of any activities authorized by the Replacement Easement, shall provide and maintain in effect the types and amounts of insurance indicated in this Section with insurance companies approved by Homestake in its sole discretion. Such coverage will be documented and SDSTA will forward such documentation to Homestake prior to use or occupancy of the Property.

(1) Worker's Compensation Insurance. SDSTA shall secure worker's compensation insurance, including Occupational Disease (as that term is defined by South Dakota law) insurance in accordance with the laws of the State of South Dakota, and Employers' Liability Insurance in the amounts of not less than \$500,000 per person, and \$500,000 per accident.

(2) General Liability Insurance. SDSTA shall secure general liability insurance naming the Homestake Indemnified Parties (as that term is used in the Property Donation Agreement) as ~~an~~ additional insureds that provides coverage for contractual liability, as well as the indemnity agreement set forth in this Agreement and products-completed operations coverage with limits of not less than \$2,000,000 and not more than \$5,000,000 applicable to bodily injury, sickness or death in any one occurrence;

and not less than \$2,000,000 and not more than \$5,000,000 for loss of or damage to property in any one occurrence.

(3) Environmental Risk Insurance. SDSTA shall secure Environmental Risk Insurance naming Homestake the Homestake Indemnified Parties (as that term is used in the Property Donation Agreement as ~~an~~ additional insureds to cover any and all on-site and off-site pollution for its use or occupancy of the Property for the Replacement Easement and Permitted Uses, or provide for such coverage under policies SDSTA maintains under the Property Donation Agreement. By way of clarification, apart from the requirements of this section to ensure Homestake and its Affiliates are additional insureds and ensuring coverage under the existing policy or policies of the Property and for the Permitted Uses, SDSTA need not purchase additional environmental risk insurance limits of liability above or beyond those that required under the Property Donation Agreement.

(4) Subcontractors' Insurance. SDSTA shall require all of its contractors and subcontractors to obtain, maintain and keep in force during the time in which they are engaged in performing work hereunder, the coverages set forth in subparagraphs (1) and (2) above, and subparagraph (6) below, and shall furnish Homestake acceptable evidence of such insurance prior to starting work on the Homestake real property. If any contractors or subcontractors do not obtain, maintain and keep in force the required coverages, then SDSTA will be deemed to have elected to provide the required coverages under policies SDSTA maintains hereunder, or under policies SDSTA maintains under the Property Donation Agreement. Such coverage will be documented and forwarded to Homestake prior to use or occupancy of the Property.

(5) Equipment Insurance. All equipment, supplies and materials belonging to SDSTA or used by or on behalf of SDSTA for its performance hereunder shall be brought to and kept at the job site at SDSTA's sole cost, risk and expense, and Homestake shall not be liable for loss or damage thereto. Any insurance policies carried by SDSTA or any third party on said equipment, supplies and materials shall provide for waiver of the underwriter's right to subrogation against Homestake.

(6) Automobile Liability Insurance. SDSTA shall secure automobile liability insurance covering owned, non-owned, and hired vehicles used by SDSTA in limits not less than \$1,000,000 applicable to bodily injury, sickness or death of any one person, and \$1,000,000 for more than one person in any one occurrence; and \$1,000,000 for loss of or damage to property in any one occurrence.

(7) Nuclear Liability Insurance. In the event that the SDSTA produces neutrinos or particles with a reactor on the Property, SDSTA shall, at its own expense, obtain and maintain, or cause to be obtained and maintained, nuclear liability

insurance naming Homestake as an additional insured from American Nuclear Insurers with a combined property damage and bodily injury limit of liability in an amount determined by the Nuclear Regulatory Commission (NRC) covering all nuclear reactors, nuclear materials and nuclear waste in connection with the use of the Property. The deductible shall be not greater than \$250,000 per accident.

(8) Subrogation. All policies shall be endorsed to provide that the underwriters and insurance companies of SDSTA shall not have any rights of subrogation against Homestake, or against any subsidiaries, agents, employees, invitees, servants, subcontractors, insurers, underwriters, and such other parties as Homestake may designate.

(9) Certificates. SDSTA shall furnish Certificates of Insurance to Homestake evidencing the insurance required hereunder and, upon request, Homestake may examine true copies of the actual policies. Each certificate shall provide that thirty (30) days prior written notice shall be given the Homestake in the event of cancellation or material change in the policies. All policies shall be endorsed to provide that there will be no recourse against Homestake for payment of any premium.

(10) Additional Insurance. By so specifying, Homestake may reasonably require additional types of insurance; provided, however that the limits thereof may not exceed the limits of liability stated in this Agreement..

(11) Primary Insurance. It is hereby understood and agreed that any coverage provided Homestake by SDSTA's insurance under this Agreement is primary insurance and shall not be considered contributory insurance with any insurance policies of Homestake.

C. Limit of Liability.

(1) SDSTA shall be responsible for all Liabilities, including, without limitation, the liabilities set forth in Section 7.D.(1) through 7.D.(6); provided, however, anything elsewhere in this Agreement to the contrary notwithstanding, that SDSTA's responsibility for Liabilities, including but not limited to any responsibility to indemnify set out in this Agreement, shall be limited to Liabilities resulting from SDSTA's use and occupancy of the Property.

(2) The Parties agree that there are no covenants between them regarding the fitness or suitability of the Property for the Replacement Easement or Permitted Uses. WITHOUT LIMITING THE FOREGOING, HOMESTAKE EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES CONCERNING THE SUITABILITY OF THE PROPERTY FOR ANY OF SDSTA'S INTENDED USES OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION AND SDSTA'S USE

OF THE PROPERTY FOR THE REPLACEMENT EASEMENT AND PERMITTED USES SHALL BE 'AS IS, WHERE IS' WITH ALL FAULTS.

D. Indemnification. SDSTA agrees to and does hereby release, indemnify and hold the Homestake Indemnified Parties ~~and its employees, agents and officers~~ harmless from and against all Liabilities, including, without limitation, the following:

(1) Any and all claims and liabilities, including, without limitation, costs, attorneys' fees, and expenses, for bodily injury to, or death of, persons, (including claims and liabilities for care or loss of services in connection with any bodily injury or death);

(2) Any and all claims and liabilities, including, without limitation, costs, attorneys' fees, and expenses, for loss or destruction of or damage to any property belonging to SDSTA or others (including claims or liabilities for loss of use of any property);

(3) Any and all claims, losses, and liabilities, including, without limitation, costs, attorneys' fees, and expenses, for any damage to Homestake property (including without limitation any environmental damages or liability) arising from any negligent or wrongful activities of SDSTA, its agents, representatives, contractors, or subcontractors;

(4) Any and all claims, losses, and liabilities, including, without limitation, costs, attorneys' fees, and expenses, for loss (including loss of use) or destruction of or damage to (a) materials, supplies, equipment and other property necessary for the work, or (b) any property of SDSTA, its agents, representatives, contractors, or subcontractors;

(5) Any and all claims, losses, and liabilities, including, without limitation, costs, attorneys' fees, and expenses, resulting directly or indirectly from or occurring in the course of SDSTA's exercise of its rights under the Replacement Easement, including, without limitation, transportation activities on, to, or from the Property or for purposes of the Replacement Easement; and

(6) Any and all claims, losses, and liabilities, including, without limitation, costs, attorneys' fees, and expenses, resulting directly or indirectly from (a) damage to the Environment from or related to SDSTA's, or its agent's, representative's, contractor's, or subcontractor's, use or occupancy of the Properties for the Replacement Easement or Permitted Uses, (b) violation or alleged violation of Applicable Laws or Environmental Laws, or (c) violation or alleged violation of or failure to secure Environmental Permits or other governmental consents or approvals.

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8. Perpetual Easement, Termination for Non-Use: The Replacement Easement granted herein shall be a perpetual easement which shall run with the land and be binding upon, and inure to the benefit of, the Parties and their successors and assigns. Provided, however, that if SDSTA does not dispose of excavated rock within the Replacement Easement area within twenty (20) years of the date of recording of this Agreement, SDSTA's rights hereunder shall cease and shall no longer have any force or effect.

9. Notices: Any notice, election or other correspondence required or permitted hereunder shall be deemed to have been properly given or delivered when made in writing and delivered personally to the Party to whom directed, or when deposited in the United States mail, postage prepaid, by certified mail, return receipt requested, and addressed to the Party to whom directed as follows:

If to Homestake: Homestake Mining Company of California
Attn: Site Manager
11457 Bobtail Gulch Street
Central City, SD 57754

With a copy to: Homestake Mining Company of California
Attn: Vice President & General Counsel, North America
310 South Main, Suite 1150
Salt Lake City, UT 84101

If to SDSTA: South Dakota Science and Technology Authority
Attn: Mike Headley, Executive Director
630 E. Summit
Lead, SD 57754

10. Time of Essence: Time is of the essence of this Agreement.

11. Compliance With All Laws: In performing work under this Agreement, SDSTA, its contractors and subcontractors, shall comply with all applicable Federal, State and local laws, rules and regulations.

12. Neutral Construction: This Agreement and the wording contained herein accords with the negotiations of the Parties. Accordingly, no provision hereof shall be construed against one Party or in favor of another Party merely by reason of draftsmanship.

13. Interpretative Matters: References to Sections and Exhibits in this Agreement are to Sections of this Agreement and to the Exhibits attached hereto. Words in the singular or plural include the singular and plural and pronouns stated in either the

masculine, the feminine or neuter gender shall include the masculine, feminine and neuter. When not expressly stated, the word “including” means “including but not limited to.”

14. Assignment: ~~Neither This Agreement and nor any of the the~~ obligations, liabilities, rights and benefits arising hereunder, may ~~not~~ be assigned by either Party without the express written consent of the other Party; provided, however, that SDSTA may without Homestake’s consent assign its interest herein to the United States of America, acting through the Department of Energy, upon written notice thereof to Homestake.

15. Entire Agreement: This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. This Agreement may only be amended, modified or supplemented by a written instrument signed by all the Parties expressly stating that such instrument is intended to amend, modify or supplement this Agreement.

16. Governing Law, Jurisdiction and Venue, and Service of Process: This Agreement shall be construed under and governed by the laws of the State of South Dakota, without the application of the conflicts of law principles thereof, and any applicable federal law. Any lawsuit arising out of or related to this Agreement shall be brought in the ~~federal~~ ~~or~~ state courts of South Dakota. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, service of process on a Party may be made by mail upon the designated person at the address provided in Section 8.

17. Severability: If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. A provision of similar economic effect shall be substituted for any invalid, illegal or unenforceable provision.

18. Counterparts: This Agreement may be signed in counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. The Parties intend that fax signatures constitute original signatures and that a faxed agreement containing the signatures (original or faxed) of all the Parties is binding on the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

[SIGNATURE PAGE FOLLOWS]

**HOMESTAKE MINING COMPANY OF
CALIFORNIA**

Dated _____, 20____. By: _____
Signature

Printed Name and Title

Dated _____, 20____. By: _____
Signature

Printed Name and Title

**SOUTH DAKOTA SCIENCE AND TECHNOLOGY
AUTHORITY**

Dated _____, 20____. By: _____
Signature

Executive Director

Printed Name and Title

STATE OF _____)
) ss. **CORPORATE ACKNOWLEDGMENT**
COUNTY OF _____)

On this the ____ day of _____, 20__, before me, the undersigned officer, personally appeared _____, known to me to be the _____ for **HOMESTAKE MINING COMPANY OF CALIFORNIA**, and on oath stated that he was authorized to sign the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Comm. Expires _____

STATE OF _____)
) ss. **CORPORATE ACKNOWLEDGMENT**
COUNTY OF _____)

On this the ____ day of _____, 20__, before me, the undersigned officer, personally appeared _____, known to me to be the _____ for **HOMESTAKE MINING COMPANY OF CALIFORNIA**, and on oath stated that he was authorized to sign the foregoing instrument on behalf of the corporation for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Comm. Expires _____

STATE OF _____)
) ss. **CORPORATE ACKNOWLEDGMENT**
COUNTY OF _____)

On this the ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, known to me to be the Executive Director for **SOUTH DAKOTA SCIENCE AND TECHNOLOGY AUTHORITY**, and on oath stated that he was authorized to sign the foregoing instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My Comm. Expires _____

**FACILITY AND LAND USE AGREEMENT
HOMESTAKE MINING COMPANY PROPERTY**

This Agreement is made and entered into this ___ day of _____, 2018, by and between the South Dakota Science and Technology Authority, 630 E. Summit Street, Lead, SD, 57754 (“SDSTA”) and Kiewit / Alberici Joint Venture, 8510 W. Higgins Rd, Suite 400, Chicago, IL, 60631 (“KAJV”).

RECITALS

A. It is anticipated that KAJV, pursuant to the terms of the Fermilab Subcontract for Long Baseline Neutrino Facility (“LBNF”) Far Site Facilities, executed by Fermi Research Alliance, LLC (“FRA”) on July 27, 2017 (the “Fermilab Subcontract”), will be tasked with installing a temporary rock conveyor system (“TRCS”) across and through (including both underground and above ground) property owned by Homestake Mining Company of California (“Homestake”) and others. The TRCS will be used to move rock excavated from the 4850’ level across property owned by SDSTA, Homestake and others into the “Open Cut” site owned by Homestake, all in connection with the construction of the Long-Baseline Neutrino Facility (“LBNF”).

B. The TRCS will be a conveyor system with an appropriate safety enclosure for the portion of the conveyor that is above ground.

C. The proposed route of the TRCS across and through Homestake-owned real estate is shown on Exhibit A, attached hereto and incorporated herein by this reference. Exhibit A also shows the location of access for construction, operation, and maintenance of the TRCS across and through Homestake-owned real estate. The property subject to the rights granted hereunder and described on the attached Exhibit A is referred to hereinafter as the “Homestake TRCS Use Area.”

D. Homestake has granted SDSTA an easement, including a right of access and the right to deposit excavated rock into the Open Cut, as described in the Termination of Easement and Replacement Easement Agreement attached hereto, marked as Exhibit B, and incorporated herein by this reference (the “Homestake Easement”).

E. KAJV will require access to, and temporary possession of, the Homestake TRCS Use Area for the purpose of installation, maintenance and operation of the TRCS.

F. The TRCS will deposit excavated rock into the Open Cut. The rights of use and access described herein include the right to deposit excavated rock into the Open Cut as described herein.

G. SDSTA desires to make a grant to KAJV and its subcontractors and necessary licensees and invitees (including but not limited to Fermi Research Alliance, LLC, and the United States of America, acting through the Department of Energy) of the rights granted to SDSTA under the Homestake Easement, and KAJV desires to accept said grant of access, right

of temporary possession, and right to deposit excavated rock into the Open Cut, all according and subject to the terms and conditions set forth herein.

AGREEMENT

For and in consideration of the foregoing Recitals and the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties AGREE as follows:

1. SDSTA hereby grants KAJV and its subcontractors and reasonably necessary licensees and invitees (including but not limited to ~~Fermi Research Alliance, LLC, FRA~~ and the United States of America, acting through the Department of Energy) a temporary, limited, and revocable right of use and access to enter upon the Homestake TRCS Use Area for the sole and limited purpose of installing, maintaining, and operating the TRCS as described on the attached Exhibit C (the "Work").

2. The foregoing grant is subject to the following terms and conditions:

(a). Any changes to Exhibit A must be approved in writing by SDSTA's Representative prior to commencing any part of the Work or implementation of any change after the commencement of the Work. Any material changes to Exhibit C must be provided to SDSTA's Representative at least twenty (20) days prior to implementation;

(b). At least ten (10) business days prior to commencement of the Work, KAJV must provide SDSTA's Representative with proof, reasonably acceptable to SDSTA, of the existence of the insurance coverages required under section A, paragraph 5 of the Fermilab Subcontract relating to Option 1A;

(c). Any health or safety hazards resulting from the Work (including but not limited to trip and fall hazards) must be appropriately mitigated at the end of each day during which the Work is conducted, and may not be left unattended if not mitigated;

(d). Without limiting the generality of any of the foregoing, KAJV must comply with SDSTA's environment, safety, and health (ESH) requirements;

(e). Any Homestake or SDSTA employee or representative may require KAJV to stop the Work in the event of an actual or perceived health or safety hazard until such time as the hazard is mitigated to the satisfaction of SDSTA's Representative;

(f). Upon completion of the installation of the TRCS, the Homestake TRCS Use Area must be appropriately secured, all construction rubble and waste must be removed therefrom, and it must otherwise be maintained in a manner consistent with the surrounding real estate owned by Homestake and so as not create an eyesore;

(g). Neither KAJV nor any of its contractors, subcontractors, agents, licensees and invitees may authorize or allow any mechanics, materialmen, vendors, or other lien of any kind or nature whatsoever to attach to the real estate subject to this Agreement, nor to any part thereof or interest therein. If any such lien shall attach to said real estate, KAJV shall, at its own expense, promptly take all steps necessary to obtain the discharge and release of any such lien. KAJV shall indemnify and hold Homestake and SDSTA harmless from and against any such liens;

(h). KAJV must at all times comply with the covenants, terms, and conditions of the Homestake Easement, including without limitation sections 4, 5, and 6 thereof; provided, however that KAJV shall have no obligation to provide the specific insurance required under subsections 7.B(2), 7.B(3), or 7.B(7) of the Homestake Easement; and further provided, however, that KAJV shall not have any obligation arising under the terms of the Homestake Easement to indemnify Homestake. The foregoing and anything elsewhere in this Agreement to the contrary notwithstanding, KAJV acknowledges and agrees that the Work to be conducted on and around the Homestake TRCS Use Area is a part of the scope of work under the Fermilab Subcontract, including but not limited to as described on **page 31** of the Subcontract. KAJV further acknowledges and agrees that the obligation to provide certain insurance coverages to Homestake, SDSTA and others (including commercial general liability coverage and pollution liability coverage) and the obligation to indemnify Homestake, SDSTA and others, as set out on pages 15-20 and 68-70 in the Subcontract, also apply to the Work to be performed under this Agreement. Prior to commencement of the Work, KAJV shall cause its insurers to provide written assurance, reasonably acceptable to Homestake and SDSTA, that the insurance coverage the Fermilab Subcontract requires KAJV to purchase includes coverage for risks arising out of or related to the Work.

(i). Without limiting the generality of the reference to sections 4, 5, and 6 of the Homestake Easement stated above in subsection 2(h), KAJV acknowledges and agrees it is solely responsible for obtaining any and all necessary permits as provided in subsection 5.A of the Homestake Easement; for procuring, conducting, and paying for any further engineering, geologic, reclamation, and other studies as described in subsections 5.B and 5.C of the Homestake Easement; and for obtaining such further approvals from Homestake as may be required under any provision of the Homestake Easement; and

(j) KAJV and its contractors, subcontractors, agents, licensees and invitees shall comply with SDSTA's Risk Transfer Protocols, a copy of which has been provided to KAJV.

3. KAJV will re-convey to SDSTA all rights related to the Homestake Easement granted hereunder within one hundred eighty (180) days of final completion of the excavation on and under SDSTA's property for LBNF. In addition, KAJV will re-convey to SDSTA all rights to the Homestake Easement granted hereunder for cause upon ninety days (90) written demand from SDSTA, provided the cause giving rise to the demand remains uncured at the end of said ninety (90) day period. As used in this Agreement, the term "cause" includes, but is not limited to, any material violation by Assignee of the covenants, terms, and conditions of this Agreement or of the Homestake Easement. In the event FRA terminates the Fermilab Subcontract, or in the event FRA determines not to award Option 1A or 1B (as those terms are used and defined in the

Fermilab Subcontract, this Agreement shall terminate. -KAJV's acknowledgments and agreements relating to indemnification and insurance set out above in subsection 2(h), and the provisions of sections 2(g), 6, 8, 9, and 10 of this Agreement shall survive re-conveyance to SDSTA of KAJV's rights hereunder and shall also survive termination of this Agreement for any reason.

4. Nothing herein is intended to modify or waive any insurance, indemnification, or other requirements in any existing contracts that act in favor of SDSTA or Homestake.

5. For the purposes of this Agreement, SDSTA's Representative is Tim Baumgartner, (605) 390-5035, tbaumgartner@sanfordlab.org.

6. The parties acknowledge and agree that there are no covenants between them regarding the fitness or suitability of the Property (as that term is defined and used in the Homestake Easement) for the purposes of the Replacement Easement or Permitted Uses (as those terms are defined and used in the Homestake Easement. WITHOUT LIMITING THE FOREGOING, SDSTA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES CONCERNING THE SUITABILITY OF THE PROPERTY (AS DEFINED AND USED IN THE HOMESTAKE EASEMENT) FOR ANY OF KAJV'S INTENDED USES OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION AND KAJV'S USE OF THE PROPERTY FOR PERMITTED USES (AS THOSE TERMS ARE DEFINED AND USED IN THE HOMESTAKE EASEMENT) UNDER THE HOMESTAKE EASEMENT SHALL BE "AS IS, WHERE IS" WITH ALL FAULTS. Nothing in this section 6 shall act to amend, modify, or waive any express or implied representations or warranties made by Fermi Research Alliance, LLC, under or in connection with the Subcontract.

7. Except as otherwise provided above in section 1 concerning subcontractors and reasonably necessary licensees and invitees (including but not limited to Fermi Research Alliance, LLC, and the United States of America, acting through the Department of Energy), KAJV's rights and obligations hereunder may not be assigned, nor may any rights hereunder be granted to any other party, absent SDSTA's prior written consent. KAJV acknowledges that any such consent may, among other things, be conditioned upon approval from Homestake. From time to time as SDSTA may reasonably require, KAJV shall provide to SDSTA a list of all subcontractors, licensees, and invitees who have been or are projected to be granted access to the Homestake TRCS Use Area and if requested, a description of the reason for the grant of access.

8. Nothing herein is intended to obligate SDSTA to undertake or pay for any of the Work or for SDSTA to undertake or pay the cost of compliance by KAJV with the terms and conditions of the Homestake Easement or this Agreement.

9. Nothing herein shall act to discharge, release, or modify SDSTA's obligations under the Homestake Easement, including, without limitation, to indemnify or provide proof of insurance to Homestake or any of the Homestake Indemnified Parties as provided in section 6 of the Homestake Easement.

10. The terms of this Agreement shall be construed under and governed by the laws of the State of South Dakota, without respect to the conflicts of law principles thereof. The parties were both represented by legal counsel in connection with the drafting of this Agreement and have engaged in negotiations concerning the terms and provisions hereof. Accordingly, the parties do not intend that the rule relating to the interpretation of contracts against the drafter be applied to this Agreement or any provision hereof or to any other agreement or instrument executed in connection herewith, and hereby waive the application of any such rule. This Agreement may only be amended by a written document, executed with the same formalities as this Agreement. Any lawsuit arising out of related to this Agreement must be brought in a court of the Unified Judicial System of the State of South Dakota.

SOUTH DAKOTA SCIENCE AND
TECHNOLOGY AUTHORITY

KIWIET ALBERICI
JOINT VENTURE

BY: _____

BY: _____

ITS: _____

ITS: _____

DATE: _____

DATE: _____

CONSENT TO GRANT

Homestake Mining Company of California, _____,
hereby consents to the foregoing grant of use and access upon the terms set forth therein.

Dated this ___ day of _____, 2018.

HOMESTAKE MINING COMPANY
OF CALIFORNIA

BY: _____

ITS: _____

BY: _____

ITS: _____

[ADD NOTARY ACKNOWLEDGMENTS]

DRAFT

**FACILITY AND LAND USE AGREEMENT
CITY OF LEAD PROPERTY**

This Agreement is made and entered into this ___ day of August, 2018, by and between the South Dakota Science and Technology Authority, 630 E. Summit Street, Lead, SD, 57754 (“SDSTA”) and Kiewit / Alberici Joint Venture, 8510 W. Higgins Rd, Suite 400, Chicago, IL, 60631 (“KAJV”).

RECITALS

A. It is anticipated that KAJV, pursuant to the terms of the Fermilab Subcontract for Long Baseline Neutrino Facility (“LBNF”) Far Site Facilities, executed by Fermi Research Alliance, LLC (“FRA”) on July 27, 2017 (the “Fermilab Subcontract”), will be tasked with installing a temporary rock conveyor system (“TRCS”) across and through property owned by the City of Lead, South Dakota, (the “City”), and others. The TRCS will be used to move rock excavated from the 4850’ level across property owned by SDSTA, the City, and potentially others into the “Open Cut” site owned by Homestake Mining Company of California, all in connection with the construction of the Long-Baseline Neutrino Facility (“LBNF”).

B. The TRCS will be a conveyor system with an appropriate safety enclosure for the portion of the conveyor that is above ground.

C. The proposed route of the TRCS across and through City-owned real estate is shown on Exhibit A, attached hereto and incorporated herein by this reference. Exhibit A also shows the location of access for construction, operation, and maintenance of the TRCS across and through City-owned real estate. The property subject to the rights granted hereunder and described on the attached Exhibit A is referred to hereinafter as the “City TRCS Use Area.”

D. The City has granted SDSTA an easement, including a right of access, as described in the Easement attached hereto, marked as Exhibit B, and incorporated herein by this reference (the “City Easement”).

E. KAJV will require access to, and temporary possession of, the City TRCS Use Area for the purpose of installation, maintenance and operation of the TRCS.

F. SDSTA desires to make a grant to KAJV of the rights granted to SDSTA under the City Easement, and KAJV desires to accept said grant of access, right of temporary possession, all according and subject to the terms and conditions set forth herein.

AGREEMENT

For and in consideration of the foregoing Recitals and the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties AGREE as follows:

1. SDSTA hereby grants KAJV and its subcontractors and reasonably necessary licensees and invitees (including but not limited to FRA and the United States of America, acting through the Department of Energy) a temporary, limited, and revocable right of use and access to enter upon the City TRCS Use Area for the sole and limited purpose of installing, maintaining, and operating the TRCS as described on the attached Exhibit C (the “Work”).

2. The foregoing grant is subject to the following terms and conditions:

(a). Any changes to Exhibit A must be approved in writing by SDSTA's Representative prior to commencing any part of the Work or implementation of any change after the commencement of the Work. Any material changes to Exhibit C must be provided to SDSTA's Representative at least twenty (20) days prior to implementation;

(b). At least ten (10) business days prior to commencement of the Work, KAJV must provide SDSTA's Representative with proof, reasonably acceptable to SDSTA, of the existence of the insurance coverages required under section A, paragraph 5 of the Fermilab Subcontract relating to Option 1A;

(c). Any health or safety hazards resulting from the Work (including but not limited to trip and fall hazards) must be appropriately mitigated at the end of each day during which the Work is conducted, and may not be left unattended if not mitigated;

(d). Without limiting the generality of any of the foregoing, KAJV must comply with SDSTA's environment, safety, and health (ESH) requirements;

(e). Any City or SDSTA employee or representative may require KAJV to stop the Work in the event of an actual or perceived health or safety hazard until such time as the hazard is mitigated to the satisfaction of SDSTA's Representative;

(f). Upon completion of the installation of the TRCS, the City TRCS Use Area must be appropriately secured, all construction rubble and waste must be removed therefrom, and it must otherwise be maintained in a manner consistent with the surrounding real estate owned by the City and so as not create an eyesore;

(g). Neither KAJV nor any of its contractors, subcontractors, agents, licensees and invitees may authorize or allow any mechanics, materialmen, vendors, or other lien of any kind or nature whatsoever to attach to the real estate subject to this Agreement, nor to any part thereof or interest therein. If any such lien shall attach to said real estate, KAJV shall, at its own expense, promptly take all steps necessary to obtain the discharge and release of any such lien. KAJV shall indemnify and hold the City and SDSTA harmless from and against any such liens;

(h). KAJV must at all times comply with the covenants, terms, and conditions of the City Easement, including without limitation sections 2, 3, and 5 thereof; provided, however, that KAJV shall have no obligation to provide the specific insurance required by subsection 3(f) of the City Easement; and further provided, however, that KAJV shall not have any obligation arising under the terms of the City Easement to indemnify the City. The foregoing and anything

elsewhere in this Agreement to the contrary notwithstanding, KAJV acknowledges and agrees that the Work to be conducted on and around the City TRCS Use Area is a part of the scope of work under the Fermilab Subcontract, including but not limited to as described on page 31 of the Subcontract. KAJV further acknowledges and agrees that the obligation to provide certain insurance coverages to the City, SDSTA, and others (including commercial general liability coverage and pollution liability coverage) and the obligation to indemnify the City, SDSTA, and others, as set out on pages 15-20 and 68-70 in the Subcontract, also apply to the Work to be performed under this Agreement. Prior to the commencement of the Work, KAJV shall cause its insurers to provide written assurance, reasonably acceptable to the City and SDSTA, that the insurance coverage the Fermilab Subcontract requires KAJV to purchase includes coverage for risks arising out of or related to the Work. , including, without limitation, the obligation to provide insurance as required under subsection 3(f) of the City Easement; provided, however, that KAJV shall not have any obligation arising under the terms of the City Easement to indemnify the City.

(i). Without limiting the generality of the reference to sections 2, 3, and 5 of the City Easement stated above in subsection 2(h), KAJV acknowledges and agree it is solely responsible for obtaining any and all necessary permits for the Work on the City Easement; and

(j) KAJV and its contractors, subcontractors, agents, licensees and invitees shall comply with SDSTA's Risk Transfer Protocols, a copy of which has been provided to KAJV. ; and

~~———(k) KAJV shall indemnify and hold SDSTA harmless from and against any and all claims, causes, actions or causes of action (and including related costs of litigation and a reasonable attorney fee) arising out of or related to KAJV's activities related to the City Easement.~~

3. KAJV will re-convey to SDSTA all rights related to the City Easement granted hereunder within one hundred eighty (180) days of final completion of the excavation on and under SDSTA's property for LBNF. In addition, KAJV will re-convey to SDSTA all rights to the City Easement granted hereunder for cause upon ninety days (90) written demand from SDSTA, provided the cause giving rise to the demand remains uncured at the end of said ninety (90) day period. As used in this Agreement, the term "cause" includes, but is not limited to, any violation by Assignee of the covenants, terms, and conditions of this Agreement or of the City Easement. In the event FRA terminates the Fermilab Subcontract, or in the event FRA determines not to award Option 1A or 1B (as those terms are used and defined in the Fermilab Subcontract), this Agreement shall terminate. KAJV's acknowledgments and agreements relating to indemnification and insurance set out above in subsection 2(h), and the provisions of sections 2(g), 6, 8, 9, and 10 of this Agreement shall survive re-conveyance to SDSTA of KAJV's rights hereunder and shall also survive termination of this Agreement for any reason.

4. Nothing herein is intended to modify or waive any insurance, indemnification, or other requirements in any existing contracts that act in favor of SDSTA or the City.

5. For the purposes of this Agreement, SDSTA's Representative is Tim Baumgartner, (605) 390-5035, tbaumgartner@sanfordlab.org.

6. The parties acknowledge and agree that there are no covenants between them regarding the fitness or suitability of the property covered by the City Easement for a Permitted Uses (as that term is defined and used in the City Easement). WITHOUT LIMITING THE FOREGOING, SDSTA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES CONCERNING THE SUITABILITY OF SAID PROPERTY FOR ANY OF KAJV'S INTENDED USES OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION AND KAJV'S USE OF THE PROPERTY FOR A PERMITTED USE (AS THOSE TERM IS DEFINED AND USED IN THE CITY EASEMENT) UNDER THE CITY EASEMENT SHALL BE "AS IS, WHERE IS" WITH ALL FAULTS.

7. Except as otherwise provided above in section 1 concerning subcontractors and reasonably necessary licensees and invitees ((including but not limited to FRA and the United States of America, acting through the Department of Energy), KAJV's rights and obligations hereunder may not be assigned, nor may any rights hereunder be granted to any other party, absent SDSTA's prior written consent. KAJV acknowledges that any such consent may, among other things, be conditioned upon approval from the City. From time to time as SDSTA may reasonably require, KAJV shall provide to SDSTA a list of all subcontractors, licensees, and invitees who have been or are projected to be granted access to the City TRCS Use Area and if requested, a description of the reason for the grant of access.

8. Nothing herein is intended to obligate SDSTA to undertake or pay for any of the Work or for SDSTA to undertake or pay the cost of compliance by KAJV with the terms and conditions of the City Easement or this Agreement.

9. Nothing herein shall act to discharge, release, or modify SDSTA's obligations under the City Easement, including, without limitation, to indemnify or provide proof of insurance to the City as provided in subsection 3(g) and section 4 of the City Easement.

10. The terms of this Agreement shall be construed under and governed by the laws of the State of South Dakota, without respect to the conflicts of law principles thereof. The parties were both represented by legal counsel in connection with the drafting of this Agreement and have engaged in negotiations concerning the terms and provisions hereof. Accordingly, the parties do not intend that the rule relating to the interpretation of contracts against the drafter be applied to this Agreement or any provision hereof or to any other agreement or instrument executed in connection herewith, and hereby waive the application of any such rule. This Agreement may only be amended by a written document, executed with the same formalities as this Agreement. Any lawsuit arising out of related to this Agreement must be brought in a court of the Unified Judicial System of the State of South Dakota.

SOUTH DAKOTA SCIENCE AND
TECHNOLOGY AUTHORITY

KIWIET ALBERICI
JOINT VENTURE

BY: _____

BY: _____

ITS: _____

ITS: _____

DATE: _____

DATE: _____

CONSENT TO GRANT

The City of Lead, South Dakota, a South Dakota municipal corporation, 801 W. Main Street, Lead, South Dakota, 57754, hereby consents to the foregoing grant of use and access upon the terms set forth therein.

Dated this ___ day of _____, 2018.

CITY OF LEAD, SOUTH DAKOTA

BY: _____

(SEAL)

ITS: _____

ATTEST:

BY: _____

ITS: _____

[ADD NOTARY ACKNOWLEDGMENTS]

**FACILITY AND LAND USE AGREEMENT
LOPEZ PROPERTY**

This Agreement is made and entered into this ___ day of August, 2018, by and between the South Dakota Science and Technology Authority, 630 E. Summit Street, Lead, SD, 57754 (“SDSTA”) and Kiewit / Alberici Joint Venture, 8510 W. Higgins Rd, Suite 400, Chicago, IL, 60631 (“KAJV”).

RECITALS

A. It is anticipated that KAJV, pursuant to the terms of the Fermilab Subcontract for Long Baseline Neutrino Facility (“LBNF”) Far Site Facilities, executed by Fermi Research Alliance, LLC (“FRA”) on July 27, 2017 (the “Fermilab Subcontract”), will be tasked with installing a temporary rock conveyor system (“TRCS”) across and through property owned by Steve Lopez and Erin Lopez, (collectively, “Lopez”), and others. The TRCS will be used to move rock excavated from the 4850’ level across property owned by SDSTA, Lopez, and others into the “Open Cut” site owned by Homestake Mining Company of California, all in connection with the construction of the Long-Baseline Neutrino Facility (“LBNF”).

B. The TRCS will be a conveyor system with an appropriate safety enclosure for the portion of the conveyor that is above ground.

C. The proposed route of the TRCS across and through Lopez-owned real estate is shown on Exhibit A, attached hereto and incorporated herein by this reference. Exhibit A also shows the location of access for construction, operation, and maintenance of the TRCS across and through Lopez-owned real estate. The property subject to the rights granted hereunder and described on the attached Exhibit A is referred to hereinafter as the “Lopez TRCS Use Area.”

D. Lopez has granted SDSTA an easement, including a right of access, as described in the Easement attached hereto, marked as Exhibit B, and incorporated herein by this reference (the “Lopez Easement”).

E. KAJV will require access to, and temporary possession of, the Lopez TRCS Use Area for the purpose of installation, maintenance and operation of the TRCS.

F. SDSTA desires to make a grant to KAJV of the rights granted to SDSTA under the Lopez Easement, and KAJV desires to accept said grant of access, right of temporary possession, all according and subject to the terms and conditions set forth herein.

AGREEMENT

For and in consideration of the foregoing Recitals and the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties AGREE as follows:

1. SDSTA hereby grants KAJV and its subcontractors and reasonably necessary licensees and invitees (including but not limited to FRA and the United States of America, acting through the Department of Energy) a temporary, limited, and revocable right of use and access to enter upon the Lopez TRCS Use Area for the sole and limited purpose of installing, maintaining, and operating the TRCS as described on the attached Exhibit C (the "Work").

2. The foregoing grant is subject to the following terms and conditions:

(a). Any changes to Exhibit A must be approved in writing by SDSTA's Representative prior to commencing any part of the Work or implementation of any change after the commencement of the Work. Any material changes to Exhibit C must be provided to SDSTA's Representative at least twenty (20) days prior to implementation;

(b). At least ten (10) business days prior to commencement of the Work, KAJV must provide SDSTA's Representative with proof, reasonably acceptable to SDSTA, of the existence of the insurance coverages required under section A, paragraph 5 of the Fermilab Subcontract relating to Option 1A;

(c). Any health or safety hazards resulting from the Work (including but not limited to trip and fall hazards) must be appropriately mitigated at the end of each day during which the Work is conducted, and may not be left unattended if not mitigated;

(d). Without limiting the generality of any of the foregoing, KAJV must comply with SDSTA's environment, safety, and health (ESH) requirements;

(e). Lopez or any SDSTA employee or representative may require KAJV to stop the Work in the event of an actual or perceived health or safety hazard until such time as the hazard is mitigated to the satisfaction of SDSTA's Representative;

(f). Upon completion of the installation of the TRCS, the Lopez TRCS Use Area must be appropriately secured, all construction rubble and waste must be removed therefrom, and it must otherwise be maintained in a manner consistent with the surrounding real estate owned by Lopez and so as not create an eyesore;

(g). Neither KAJV nor any of its contractors, subcontractors, agents, licensees and invitees may authorize or allow any mechanics, materialmen, vendors, or other lien of any kind or nature whatsoever to attach to the real estate subject to this Agreement, nor to any part thereof or interest therein. If any such lien shall attach to said real estate, KAJV shall, at its own expense, promptly take all steps necessary to obtain the discharge and release of any such lien. KAJV shall indemnify and hold Lopez and SDSTA harmless from and against any such liens;

(h). KAJV must at all times comply with the covenants, terms, and conditions of the Lopez Easement, including without limitation sections 2, 3, and 5 thereof; provided, however, that KAJV shall have no obligation to provide the specific insurance required by subsection 3(f) of the Lopez Easement; and further provided, however, that KAJV shall not have any obligation arising under the terms of the Lopez Easement to indemnify Lopez. The foregoing and anything

elsewhere in this Agreement to the contrary notwithstanding, KAJV acknowledges and agrees that the Work to be conducted on and around the Lopez TRCS Use Area is a part of the scope of work under the Fermilab Subcontract, including but not limited to as described on page 31 of the Subcontract. KAJV further acknowledges and agrees that the obligation to provide certain insurance coverages to Lopez, SDSTA, and others (including commercial general liability coverage and pollution liability coverage) and the obligation to indemnify SDSTA and others, as set out on pages 15-20 and 68-70 in the Subcontract, also apply to the Work to be performed under this Agreement. Prior to the commencement of the Work, KAJV shall cause its insurers to provide written assurances, reasonably acceptable to Lopez and SDSTA, that the insurance coverage the Fermilab Subcontract requires KAJV to purchase includes coverage for risks arising out of related to the Work.

(i). Without limiting the generality of the reference to sections 2, 3, and 5 of the Lopez Easement stated above in subsection 2(h), KAJV acknowledges and agree it is solely responsible for obtaining any and all necessary permits for the Work on the Lopez Easement; and

(j) KAJV and its contractors, subcontractors, agents, licensees and invitees shall comply with SDSTA's Risk Transfer Protocols, a copy of which has been provided to KAJV.

3. KAJV will re-convey to SDSTA all rights related to the Lopez Easement granted hereunder within one hundred eighty (180) days of final completion of the excavation on and under SDSTA's property for LBNF. In addition, KAJV will re-convey to SDSTA all rights to the Lopez Easement granted hereunder for cause upon ninety days (90) written demand from SDSTA, provided the cause giving rise to the demand remains uncured at the end of said ninety (90) day period. As used in this Agreement, the term "cause" includes, but is not limited to, any violation by Assignee of the covenants, terms, and conditions of this Agreement or of the Lopez Easement. In the event FRA terminates the Fermilab Subcontract, or in the event FRA determines not to award Option 1A or 1B (as those terms are used and defined in the Fermilab Subcontract), this Agreement shall terminate. KAJV's acknowledgments and agreements relating to indemnification and insurance set out above in subsection 2(h), and the provisions of sections 2(g), 6, 8, 9, and 10 of this Agreement shall survive re-conveyance to SDSTA of KAJV's rights hereunder and shall also survive termination of this Agreement for any reason.

4. Nothing herein is intended to modify or waive any insurance, indemnification, or other requirements in any existing contracts that act in favor of SDSTA or Lopez.

5. For the purposes of this Agreement, SDSTA's Representative is Tim Baumgartner, (605) 390-5035, tbaumgartner@sanfordlab.org.

6. The parties acknowledge and agree that there are no covenants between them regarding the fitness or suitability of the property covered by the Lopez Easement for a Permitted Uses (as that term is defined and used in the Lopez Easement). **WITHOUT LIMITING THE FOREGOING, SDSTA EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES CONCERNING THE SUITABILITY OF SAID PROPERTY FOR ANY OF KAJV'S INTENDED USES OR FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION AND KAJV'S USE OF THE PROPERTY FOR A PERMITTED USE (AS THOSE TERM IS**

DEFINED AND USED IN THE LOPEZ EASEMENT) UNDER THE LOPEZ EASEMENT SHALL BE "AS IS, WHERE IS" WITH ALL FAULTS.

7. Except as otherwise provided above in section 1 concerning subcontractors and reasonably necessary licensees and invitees (including but not limited to FRA and the United States of America, acting through the Department of Energy), KAJV's rights and obligations hereunder may not be assigned, nor may any rights hereunder be granted to any other party, absent SDSTA's prior written consent. From time to time as SDSTA may reasonably require, KAJV shall provide to SDSTA a list of all subcontractors, licensees, and invitees who have been or are projected to be granted access to the Lopez TRCS Use Area and if requested, a description of the reason for the grant of access.

8. Nothing herein is intended to obligate SDSTA to undertake or pay for any of the Work or for SDSTA to undertake or pay the cost of compliance by KAJV with the terms and conditions of the Lopez Easement or this Agreement.

9. Nothing herein shall act to discharge, release, or modify SDSTA's obligations under the Lopez Easement, including, without limitation, to indemnify or provide proof of insurance to Lopez as provided in section 4 of the Lopez Easement.

10. The terms of this Agreement shall be construed under and governed by the laws of the State of South Dakota, without respect to the conflicts of law principles thereof. The parties were both represented by legal counsel in connection with the drafting of this Agreement and have engaged in negotiations concerning the terms and provisions hereof. Accordingly, the parties do not intend that the rule relating to the interpretation of contracts against the drafter be applied to this Agreement or any provision hereof or to any other agreement or instrument executed in connection herewith, and hereby waive the application of any such rule. This Agreement may only be amended by a written document, executed with the same formalities as this Agreement. Any lawsuit arising out of related to this Agreement must be brought in a court of the Unified Judicial System of the State of South Dakota.

SOUTH DAKOTA SCIENCE AND
TECHNOLOGY AUTHORITY

KIWIET ALBERICI
JOINT VENTURE

BY: _____

BY: _____

ITS: _____

ITS: _____

DATE: _____

DATE: _____

[ADD NOTARY ACKNOWLEDGMENTS]

DRAFT