1) DEFINITIONS. As used in this contractual agreement, the below terms shall have the following meanings: (a) "Contractor," "Buyer" or "UNAVCO" means the legal entity purchasing the supplies/services; (b) "Subcontractor," "Seller," "Supplier," or "Vendor" means the legal entity that has entered into this agreement with the Buyer; (c) "Contract," "Subcontract," "Purchase Order," "Agreement," and "Order" (whether capitalized or not) are used interchangeably and refer to this contractual instrument; (d) "Government" means the Government of the United States; and (e) "Prime Contract" means the Government contract, grant or cooperative agreement under which this order is issued.

2) APPLICABLE LAW. This Order shall be governed by and construed in accordance with the laws of the State of Colorado.

3) COMPLIANCE WITH LAWS. Seller warrants that all goods provided under this Purchase Order have been produced and all services performed are in compliance with applicable federal, state and local laws, ordinances, codes, rules, regulations or standards, including without limitation, the Fair Labor Standards Act, and those pertaining to the manufacture, labeling, invoicing and sale of such goods or services, environmental protection, immigration, employment and occupational safety and health. Sellers who perform any work or provide any services within the United States also warrant that they shall at all times comply with applicable provisions relating to government contractors and subcontractors, which provisions, and any contract clauses required under such provisions, are incorporated into this Purchase Order by reference as if set forth in full, including: the reporting, record keeping and affirmative action requirements set forth in 41 CFR § 60-1, et seq.; the incorporation of the Equal Employment Opportunity Clause of Executive Order 11246 (as amended), pursuant to 41 CFR § 60-1.4; the maintenance of non-segregated facilities as required by 41 CFR § 60-1.8; the provisions of 41 CFR § 60-250.4 relating to disabled and Vietnam era veterans; and the provisions of 41 CFR § 60-741 relating to workers with disabilities. Where legally required, Seller shall include these clauses in its purchase orders and subcontracts supporting this Purchase Order and shall, at UNAVCO’s request, certify to all of the foregoing.

4) FINANCIAL RECORDS AND AUDIT. The Agreement Holder shall preserve and make available its accounting records and documents for examination and audit by the cognizant U.S. Government agency and the Comptroller General of the United States, UNAVCO, Inc. or their authorized representatives: (1) until the expiration of three years from the date of termination of the Agreement; (2) for such longer period, if any, as is required to complete an audit to resolve all questions concerning expenditures unless written approval has been obtained from the U.S. Government ("USG") grant officer to dispose of the records (USG follows generally accepted accounting practices in determining that there has been proper accounting and use of funds); the Agreement Holder agrees to make available any further information requested by the cognizant U.S. Government agency with respect to any questions arising as a result of the audit; and (3) if any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

5) SETOFF. Buyer shall have the right at all times to set off any amount due or payable to Seller hereunder against any claim or charge Buyer may have against Seller.

6) TAXES. The price of the supplies/services procured hereunder includes all applicable federal, state, and local taxes and duties unless otherwise stated in this Order.

7) PATENT, COPYRIGHT AND TRADEMARK INDEMNITY. Seller agrees to indemnify, defend, and hold harmless Buyer, its customer, and those for whom Buyer may act as agent, from any costs, expenses, damages, or liability that Buyer may incur as a result of any proceedings charging infringement of any patent, copyright, or trademark by reason of sale or use of any supplies/services/data furnished by Seller. Seller shall have no liability regarding alleged patent infringement for supplies furnished to Buyer in accordance with Buyer’s design specifications.

8) WARRANTY OF SUPPLIES/SERVICES. Seller warrants that all supplies/services furnished under this Order shall conform to the Buyer’s drawings, specifications, or other description and will be of good material and workmanship and free of defects. Seller further warrants that the supplies/services will meet Seller’s published specifications and standards, will be new (not used or reconditioned), merchantable and suitable for the purpose intended. These warranties shall survive inspection, acceptance, and payment. Supplies/services that do not conform to the above warranties may, at any time within twelve (12) months after delivery to Buyer, be rejected and returned to Seller, at Seller’s expense, for correction or replacement. If Seller does not promptly correct or replace same, Buyer may correct or replace the nonconforming supplies/services at Seller’s expense. The foregoing warranties are in addition to all other warranties expressed or implied by law including incidental or consequential damages.

9) PRICE WARRANTY. Seller warrants that the price(s) charged for the supplies/services specified in this order do not exceed the selling price(s) Seller charges its most favored customer for the same or substantially similar items, whether sold to the Government or to any other purchaser, taking into account the quantity purchased and terms and conditions of sale. Seller further agrees that in the event of an announced price reduction prior to complete shipment of supplies or performance of services, said price reduction shall be passed on to Buyer for supplies remaining to be shipped or services still to be performed.

10) CHANGES. Changes in the terms and conditions of this Order may be made only by written agreement of the parties.

11) DISPUTES. Any dispute arising under this order that is not settled by agreement between the parties may be settled by appropriate legal proceedings in any court of competent jurisdiction. Pending final resolution, Seller shall proceed with the performance of this order in accordance with Buyer’s instructions.

12) TERMINATION FOR DEFAULT. Buyer may, without liability, and in addition to any other rights or remedies provided herein or by law, terminate this order in whole or in part by written notice of default if Seller: (a) fails to deliver the supplies or perform the services within the time specified; (b) fails to make sufficient progress with the work, thereby endangering completion of performance within the time specified; or (c) fails to comply with any of the other instructions, terms, or conditions. Buyer’s right to terminate for default may be exercised if Seller does not cure the failure within ten (10) days after receiving Buyer’s notice of such failure. If Buyer terminates this order in whole or in part, Buyer may purchase similar supplies or services from others and Seller
shall be liable for any additional costs above the original price for the terminated supplies/services. In the event of a partial termination, Seller shall continue the work not terminated. Seller shall not be liable for any additional costs if failure to perform arises from causes beyond Seller’s or Seller’s subcontractor’s control and without fault or negligence of either of them; provided, however, that the supplies/services to be furnished by Seller’s subcontractor (at any tier) were not obtainable from others in time for the Seller to meet the order delivery requirements. Buyer shall pay Seller the order price for any completed supplies/services delivered and accepted. Buyer and Seller shall agree on the amount of payment for manufacturing materials (parts, tools, dies, jigs, planes, drawings, etc.) delivered and accepted by Buyer. Buyer may withhold from any payments due Seller, any sum necessary to protect Buyer against any liability or expenses due to the termination for default. Seller shall provide Buyer any supporting information necessary to document the reasonableness of Seller’s termination for default claim.

13) CESSATION OF PRODUCTION. If Seller plans to permanently discontinue production of any of the supplies, parts, support services, etc. provided to Buyer hereunder at any time during the useful life of the equipment, Seller shall give Buyer at least six (6) months advance written notification of such discontinuance and, during this time, agrees to accept Buyer’s orders for such items.

14) EXCUSABLE DELAYS. The Seller shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Seller and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Seller shall notify the Buyer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Buyer of the cessation of such occurrence.

15) PUBLIC RELEASE OF INFORMATION. No public release of information, news release, announcement, advertisement, denial or confirmation of this order or the subject matter hereof, shall be made without Buyer’s prior written approval.

16) INSOLVENCY. If Seller ceases to conduct normal business operations (including inability to meet its obligations), or if any proceedings under bankruptcy or insolvency laws is brought by or against Seller, or a receiver for Seller is appointed or applied for, or Seller makes an assignment for the benefit of creditors, Buyer may terminate this order, without liability, except for deliveries previously made and for supplies completed and subsequently delivered in accordance with the terms of the order. In the event of Seller’s insolvency, Buyer shall have the right to procure the balance of this order from others without liability.

17) INSURANCE. Applicable only if Seller enters Buyers facility; Seller shall maintain insurance in at least the following amounts: (a) Comprehensive General Liability: $250,000 minimum per person and $500,000 minimum per accident for bodily injury, and $100,000 property damage; (b) Automobile Insurance: $250,000 per person and $500,000 per accident for bodily injury and $100,000 per accident for property damage; (c) Standard Workmen’s Compensation and Employer’s Liability Insurance: in the minimum amount of $100,000, or such greater amount as may be proper under applicable state or federal statutes. If any of the work is to be performed on Buyer’s or Buyer’s customer’s premises, Seller shall, if so requested, furnish Buyer certificates of such insurance prior to commencement of work. Upon Seller’s failure thereof, Buyer may obtain, at Seller’s expense, the insurance coverage required for such compliance. Seller also agrees to provide insurance for all Buyers’ property in Seller’s possession against loss or damage resulting from fire or theft, including extended coverage, malicious mischief and vandalism. Buyer shall be given at least ten (10) days advance written notice of cancellation of any such insurance.

18) NOTICE OF LABOR DISPUTES. When an actual or potential labor dispute or other condition delays or threatens to delay the timely performance of this order, Seller shall immediately notify Buyer in writing. Such notice shall include all relevant information regarding such dispute or other condition. Seller shall insert the essence of this provision in all lower tier procurements issued hereunder.

19) QUANTITY. It is Seller’s responsibility to furnish the quantity of supplies/services called for in this order. No variation in the quantity specified herein will be accepted as compliance with this order. Buyer reserves the right to return excess shipments at Seller’s expense.

20) NO EXTRA CHARGES. The total price payable to Seller hereunder for supplies/services furnished in accordance with the procurement requirements shall be stated in this Order. The price shall not be increased to cover any future seller price increases and shall be inclusive of packing, packaging, and cartage, premium transportation charges, reusable containers, service or carrying charges, permits, fees, and licenses, or any other charges whatsoever unless specifically agreed to in writing by Buyer.

21) LIMITATION OF LIABILITY. The Buyer’s liability to Seller hereunder shall not, under any circumstances, be greater than the total dollar amount of the order indicated herein.

22) DRUG-FREE WORKPLACE. The Seller is in compliance with the Drug-Free Workplace Act of 1988.

23) COPELAND “ANTI-KICKBACK” ACT (18 U.S.C. 874 AND 40 U.S.C. 276C). Seller shall comply with the Copeland Anti-Kickback Act and is prohibited from inducing, by any means, any person employed in the construction, completion or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violation to the Federal awarding agency.

24) DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 276A TO A-7). Where applicable, Seller shall comply with the Davis-Bacon Act in the payment of minimum wages and benefits.


26) RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. Orders for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

27) CLEAN AIR ACT (42 U.S.C. 7401 ET SEQ.) AND THE FEDERAL

Dated 01/11/2011
6350 Nautilus Drive, Boulder CO 80301

Terms and Conditions
WATER POLLUTION CONTROL ACT (33 U.S.C. 1251 ET SEQ.), AS AMENDED. Orders in excess of $100,000 shall contain a provision that requires the recipient to agree 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). By accepting this Order Seller so agrees.


29) NATIONAL ENVIRONMENTAL POLICY ACT (NEPA). Field work under this cooperative agreement must avoid all sensitive natural resource and unique geographic features such as historic or cultural resources; properties listed, or eligible for listing, on the National Register of Historic Places; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species; and other ecologically significant or critical areas. If sensitive natural resource and unique geographic features cannot be avoided, the applicant shall notify the USGS before taking any action.

30) PROHIBITION ON TEXT MESSAGING AND USING ELECTRONIC EQUIPMENT SUPPLIED BY THE GOVERNMENT WHILE DRIVING. Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, was signed by President Barack Obama on October 1, 2009 (ref: http://docket.access.op.gov/2009/pdf/EO-24203.pdf). This executive order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. Additional guidance enforcing the ban will be issued at a later date. In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or rented vehicles or GOY, or while driving POY when on official Government business or when performing any work for or on behalf of the Government.

31) DUNS/CCR (ARRA Term). Buyer must require that Seller begin planning activities, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR) no later than the first time ARRA data requirements are due.

32) BUY AMERICAN: USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (ARRA Term). Seller may not use any funds obligated under this award for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless the Department of the Interior waives the application of this provision. (ARRA Sec. 1605)

33) SEAT BELT PROVISIONS (43 CFR Sec. 12.2 (e)). Agreement Holders of grants/cooperative agreements and/or sub-awards are encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducing education, awareness, and other appropriated programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.

34) DEBARMENT AND SUSPENSION (E.O.s 12549 and 12689). No Order shall be made with 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." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees. By accepting this order Seller certifies that the Seller is not listed as Debarred or Suspended as described herein above. Agreement Holder certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any U.S. Government department or agency.

35) SEVERABILITY. If any provision of this Order is held invalid or unenforceable, the remaining provisions shall be valid and binding on the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

36) ENTIRE AGREEMENT. This Order constitutes the entire agreement between Buyer and Seller regarding this procurement and supercedes all previous written or oral agreements and commitments. No terms or conditions of sale set forth in Seller's quotation or acknowledgement shall be included as a part hereof, nor shall any prior course of dealing, custom, or usage in the trade supercedes or modify any Order provisions. Any subsequent additions, deletions or modifications to this agreement shall not be binding upon the parties unless same are mutually agreed upon and incorporated herein in writing.

Dated 01/11/2011
6350 Nautilus Drive, Boulder CO 80301