

HTL04-35-701

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| BALENT | | |
| BEELEY | | |
| BOTTS | | |
| BRECKENRIDGE | | |
| CHALKER | | |
| CHEW | | |
| COCKERMAN | | |
| COFFMAN | | |
| COURSON | | |
| CROSSLAND | | |
| DICKINSON | | |
| DIECKAMP | | |
| DUBUC | | |
| FLAHERTY | | |
| FITCH | | |
| GORDON | | |
| HABERER | | |
| HELDACK | | |
| HOLBROOK | | |
| JONES, R. E. | | |
| KOLIN | | |
| LADD, G. C. | | |
| MARTIN, A. B. | | |
| MCKENZIE, D. E. | | |
| MOELLER | | |
| MORGAN, W. T. | | |
| MURRAY | | |
| NEEDHAM | ✓ | ✓ |
| PARKINS | | |
| PEARLMAN | | |
| PETERSEN | ✓ | ✓ |
| PHILLIPS | | |
| RANDORF | | |
| RENLEY | | |
| SAKE | ✓ | ✓ |
| SIEGEL | | |
| SPIDAL | | |
| STONER | | |
| TREVILLYAN | ✓ | ✓ |
| WETHE | | |
| WHEELER | ✓ | ✓ |
| WILLIAMS, R. O. | | |
| WILSON, R. F. | | |
| WATKINS-WASH. | | |
| Fisher | ✓ | ✓ |
| EO: | | |
| D. Burnell | ✓ | ✓ |
| 8968 059 | | |
| R. J. Shubin | ✓ | ✓ |
| 898 124 | | |
| R | | |
| C | | |

December 11, 1970

In reply refer to 70AT-4603

Mr. H. B. Fry, Director
 Contracts Division
 U. S. Atomic Energy Commission
 San Francisco Operations Office
 2111 Bancroft Way
 Berkeley, California 94704

- References:
- a) SAN letter, Bolson to Wheeler, dated October 9, 1970
 - b) AI letter 70AT-4118, Wheeler to Bolson, dated November 23, 1970

Dear Mr. Fry:

Subject: UPDATING OF CONTRACT NO. AT(04-3)-701

It is our understanding that we are now in agreement on the specific language for a re-write of Contract No. AT(04-3)-701. Enclosed are several pages of the draft Mr. Bolson sent to us which have been annotated to show the agreed upon changes.

With respect to the change to ARTICLE XX DRAWINGS, DESIGNS, SPECIFICATIONS on page 50, which is modeled after its counterpart in Contract No. AT(04-3)-824, it is our understanding that the word "others" in the parenthetical phrase is not intended to include Atomic International's own subcontractors under Contract No. AT(04-3)-701.

Very truly yours,

L. W. Wheeler
 L. W. Wheeler, Manager
 Contracts

Enclosure: Pages 4, 5, 9, 15, 35, 36, 49, 50, 73

| CLASSIFICATION | LTR. | ENCL. |
|----------------|------|-------|
| UNCLASSIFIED | ✓ | ✓ |
| CONF.-DI | | |
| CONF.-RD | | |
| SECRET-DI | | |
| SECRET-RD | | |

Insert Automatic
 Downgrading
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DATE

LTR. APPROVALS

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ORIG. & TYPIST INITIALS

LWW:cc

IN REPLY TO LTR. NO.

Enclosure to
AI Ltr 70AT-4603

operation, and allied services as set forth in Tasks numbered 1 through 26 hereunder and as may be subsequently set forth from time to time in additional individually numbered Tasks.

- (b) In accordance with guidance supplied by the Commission, the Contractor shall use its best efforts to assure that the significant results of classified and unclassified scientific and technical work performed under such Tasks are reported to the Commission. The Contractor will furnish in a timely fashion under each Task reports as required by the Commission. Such reports will be prepared and distributed in accordance with "Technical Information Guide", SAN 8002. (July 1970).

It is the intent of the Commission to cooperate with the Contractor in determining the necessity, form, and frequency of such reports.

ARTICLE III CONTRACT ADMINISTRATION AND TERMS

- (a) All Tasks hereunder shall be entered into by written agreement. Each Task shall set forth the scope of work to be performed thereunder; establish a date for expiration of the Task; establish the estimated cost and the fixed fee, if any, for an annual or any other designated period and may also set forth any special provisions or conditions applicable thereto. Amendments to Tasks or groups of Tasks may be combined in a single amendment, or amendments, for contracting convenience of the parties with the same effect as if entered into separately. The scope of work for any

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*mutually
agreed up*

Task for a designated period may be further delineated in a Program Letter which describes, in further detail, work to be performed during a designated period within the provisions of the Scope of Work set forth in such Task. Program Letters and Financial Plans will be transmitted to the Contractor by the Contracting Officer or his representative and for administrative convenience and efficiency may treat any or all Tasks in a single letter or plan.

- (b) This Supplemental Agreement shall be effective as of the date stated in the opening paragraph hereof and shall continue in effect until the most remote expiration date of any Task hereunder, unless sooner terminated as provided under this Supplemental Agreement or unless extended by mutual agreement of the parties. *Upon 60 days written request by either party to the other and made at not*
- ARTICLE IV CHANGES *more frequent intervals than any two year period commencing January 1, 1971, the parties*

- (a) Changes and Adjustment of Fee. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of any Task requiring additional work or directing the omission of or variation in work covered by any Task. If any such direction results in a material change in the amount or character of the work described in any Task, an equitable adjustment of the fixed fee shall be made in accordance with the agreement of the parties and the Task shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting *agree to review and discuss the terms and conditions of this Contract, provided, however, that nothing herein shall preclude the parties from* ARTICLE IV *otherwise discussing and reviewing this agreement at any time, or entering into any supplemental agreement.*

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- (2) Upon or prior to July¹ of each year, or within a reasonable time thereafter, the Commission will issue to the Contractor for the current fiscal year a preliminary financial plan. As soon as reasonably practicable a definitive financial plan will be issued by the Commission to the Contractor.
- (3) Financial plans may be amended or supplemented from time to time by the Contracting Officer. The financial plans will specify the funds available for work under any Task under the contract for the fiscal year. The Contractor shall use its best efforts to conform to the details of such financial plans. Additionally, in order to comply with applicable provisions of federal appropriations act and fiscal year controls, the Contracting Officer may inform the Contractor as to any special limitations on cost to be incurred in the performance of any Task under this contract, and the Contractor shall conform thereto.
- (4) ~~Supplemental~~ ^{to} agreements to each Task will be executed ~~periodi-~~^{from time}
~~cally~~^{to time} to obligate such additional funds as may be necessary.
- (5) During the course of this work, the Commission may review the currently authorized Tasks and costs and may revise the applicable Program Letter and/or Financial Plan.

ARTICLE V

It is the Commission's intention that there shall be so provided at all times sufficient funds to support each Task's operations, as authorized by the Commission, for a period of not less than ninety (90) days.

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directly chargeable to this contract paid for occasional overtime in excess of eight hours beyond the scheduled work week; and (D) the costs of material changes in the Contractor's established personnel policies relating to Contractor's ~~Power Systems Divisions or~~ Atomics International Division which are not generally applicable throughout Contractor's aerospace and systems operations.

Copies of the Contractor's appropriate Corporate Directives ~~Power Systems Divisions' Standard Operating Policies~~ and the Atomics International Division Standard Operating Policies, together with revisions thereto, will be made currently available to the Commission as issued by the Contractor.

- (9) Rentals and leases of land, buildings and equipment owned by third parties where such items are used in the performance of the contract, except that rentals and leases of the land and buildings directly chargeable to the contract shall be subject to approval by the Contracting Officer.
- (10) Repairs, maintenance, inspection, replacement and disposal of Government-owned property to the extent directed or approved by the Contracting Officer.
- (11) Repairs, maintenance and inspection of Contractor-owned property used in connection with the performance of this contract including reasonable standby facilities which are due to ordinary wear and tear from use and the action of the elements provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent

shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property if and as directed by the Contracting Officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government on request all reasonable assistance in obtaining recovery.

- (h) Government Property for Government Use Only. Government Property shall be used only for the performance of this contract unless otherwise authorized by the Contracting Officer.

ARTICLE XI SUBCONTRACTS AND PURCHASE ORDERS

*are set forth in the Atomic
International Material Division
Manual Section 1, dated August, 1957
Revisions thereto*

- (a) The Contractor may, and shall when directed by the Contracting Officer, enter into contracts (including subcontracts and purchase orders) in writing with third parties for the performance of any part of the work under Article II "Statement of Work and Reporting" of this contract. The methods, practices, or procedures used or to be used by the Contractor in contracting with third parties and in purchasing shall be subject to the prior written approval of the Contracting Officer. No contract or purchase order shall be entered into by the Contractor for items the purchase of which is expressly prohibited by written directions of the Contracting Officer.
- (b) Except as otherwise authorized by the Contracting Officer, the said practices will provide that:
- (1) The following contracts, the costs of which are chargeable directly to this prime contract, shall be subject to prior written approval of the Contracting Officer:

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- (i) Fixed-price contracts over \$25,000.00.
- (ii) Cost-type, time-and-material, or labor-hour contracts over \$500.00.
- (iii) Leases or rentals of personal property for use by Atomics International Division over \$1,000.00.
- (iv) Contracts providing for the purchase of patents or patent licenses, or for the direct payment of patent royalties.
- (v) Contracts containing any restriction on the use ^{of} ~~of~~ dissemination of supplies or technical information called for under the contract except as provided in Article XX entitled "Drawings, Designs, Specifications".
- (vi) Consultant or architect-engineer contracts.
- (vii) Contracts involving correction of an alleged mistake in bid where the mistake exceeds \$50.00 and is not an obvious clerical error.
- (viii) Research and development contracts.
- (ix) Changes or modifications to contracts approved pursuant to (i) through (vi) and (viii) above shall be subject to prior written approval of the Contracting Officer; provided, however, that in contracts of the types described in (i) through (iii) above, such prior written approval shall be required only if the changes increase the then current contract price by more than ten percent

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to undertake for others. The Contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The Contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another Commission cost-type contractor under its contract with the Commission except with the prior approval of the Contractor.

ARTICLE XIX CONTRACTOR'S ORGANIZATION

- (a) As promptly as possible after the execution of this contract the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.
- (b) The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. The Contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in Atomic Energy Commission Procurement Regulations 9-12.54 ^(September 27, 1969 Ed.) and such standards and procedures shall be subject to the approval of the Contracting Officer.

ARTICLE XX DRAWINGS, DESIGNS, SPECIFICATIONS

- (a) All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs,

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negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies thereof (hereinafter referred to as "Technical Information"), relating to the work under this contract or to any part thereof, shall be subject to inspection by the Commission at all reasonable times (for which inspection the proper facilities shall be afforded the Commission by the Contractor and its subcontractors), shall be the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the Contractor and its subcontractors and vendors for additional compensation and shall, subject to the right of the Contractor to retain a copy of said Technical Information for its own use, be delivered to the Government, or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. The Contractor's right of retention and use of such Technical Information shall be subject to the

security and patent provisions, if any, of this contract, and, ~~further, the Contractor's right of use is restricted to use in except as specifically authorized by this contract, or as otherwise approved by the Contracting Officer, such Technical Information developed or acquired by or furnished the Contractor in connection with performance of work under this contract unless prior approval is obtained from the Commission for other use; provided, however, that such prior approval shall not be required in regard to Technical Information (i) developed by the Contractor in connection with the work under this contract.~~

- (b) In addition to the rights of the parties in Technical Information set forth in paragraph (a), the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive license

ARTICLE XX

(as distinguished from Technical Information developed or furnished by others including the Commission) which has previously been reported to the Commission, or (ii) developed or acquired by the Contractor under arrangements or transactions not under this contract.

respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE XXXIII LITIGATION AND CLAIMS

- If the Government requires the*
(a) ~~Initiation of Litigation. The Contractor may, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract.~~ *Contracting Officer to initiate litigation, or if, after notice thereof, the Contracting Officer approves the initiation of litigation by the Contractor, including proceedings before administrative agencies, in connection with this contract.* The Contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.
- (b) Defense and Settlement of Claims. The Contractor shall give the Contracting Officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, and (2) of any claim against the Contractor, the cost and expense of which is allowable under the Article entitled "Allowable Costs and Fixed Fee." Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the





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operation, and allied services as set forth in Tasks numbered 1 through 26 hereunder and as may be subsequently set forth from time to time in additional individually numbered Tasks.

- (b) In accordance with guidance supplied by the Commission, the Contractor shall use its best efforts to assure that the significant results of classified and unclassified scientific and technical work performed under such Tasks are reported to the Commission. The Contractor will furnish in a timely fashion under each Task reports as required by the Commission. Such reports will be prepared and distributed in accordance with "Technical Information Guide", SAN 8002. (July 1970).

It is the intent of the Commission to cooperate with the Contractor in determining the necessity, form, and frequency of such reports.

ARTICLE III CONTRACT ADMINISTRATION AND TERM

- (a) All Tasks hereunder shall be entered into by written agreement. Each Task shall set forth the scope of work to be performed thereunder; establish a date for expiration of the Task; establish the estimated cost and the fixed fee, if any, for an annual or any other designated period and may also set forth any special provisions or conditions applicable thereto. Amendments to Tasks or groups of Tasks may be combined in a single amendment, or amendments, for contracting convenience of the parties with the same effect as if entered into separately. The scope of work for any

ARTICLE III

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*mutually
agreed up*

Task for a designated period may be further delineated in a Program Letter which describes, in further detail, work to be performed during a designated period within the provisions of the Scope of Work set forth in such Task. Program Letters and Financial Plans will be transmitted to the Contractor by the Contracting Officer or his representative and for administrative convenience and efficiency may treat any or all Tasks in a single letter or plan.

- (b) This Supplemental Agreement shall be effective as of the date stated in the opening paragraph hereof and shall continue in effect until the most remote expiration date of any Task hereunder, unless sooner terminated as provided under this Supplemental Agreement

or unless extended by mutual agreement of the parties. Upon 60 days written request by either party to the other and made at no more frequent intervals than any two year period commencing January 1, 1971, the part

ARTICLE IV CHANGES

- (a) Changes and Adjustment of Fee. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of any Task requiring additional work or directing the omission of or variation in work covered by any Task. If any such direction results in a material change in the amount or character of the work described in any Task, an equitable adjustment of the fixed fee shall be made in accordance with the agreement of the parties and the Task shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting

agree to review and discuss the terms and conditions of this Contract, provided, however, that nothing herein shall preclude the parties from discussing and receiving this agreement at any time, or entering into any supplemental agreement.

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- (2) Upon or prior to July¹ of each year, or within a reasonable time thereafter, the Commission will issue to the Contractor for the current fiscal year a preliminary financial plan. As soon as reasonably practicable a definitive financial plan will be issued by the Commission to the Contractor.
- (3) Financial plans may be amended or supplemented from time to time by the Contracting Officer. The financial plans will specify the funds available for work under any Task under the contract for the fiscal year. The Contractor shall use its best efforts to conform to the details of such financial plans. Additionally, in order to comply with applicable provisions of federal appropriations act and fiscal year controls, the Contracting Officer may inform the Contractor as to any special limitations on cost to be incurred in the performance of any Task under this contract, and the Contractor shall conform thereto.
- (4) *AS* supplemental agreements to each Task will be executed ~~periodi-~~^{from time}
~~cally~~^{to time} to obligate such additional funds as may be necessary.
- (5) During the course of this work, the Commission may review the currently authorized Tasks and costs and may revise the applicable Program Letter and/or Financial Plan.

ARTICLE V

It is the Commission's intention that there shall be so provided at all times sufficient funds to support each Task's operations, as authorized by the Commission, for a period of not less than ninety (90) days.

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directly chargeable to this contract paid for occasional overtime in excess of eight hours beyond the scheduled work week; and (D) the costs of material changes in the Contractor's established personnel policies relating to Contractor's ~~Power Systems Divisions~~ or Atomics International Division which are not generally applicable throughout Contractor's aerospace and systems operations.

Copies of the Contractor's appropriate Corporate Directives ~~Power Systems Divisions' Standard Operating Policies~~ and the Atomics International Division Standard Operating Policies, together with revisions thereto, will be made currently available to the Commission as issued by the Contractor.

- (9) Rentals and leases of land, buildings and equipment owned by third parties where such items are used in the performance of the contract, except that rentals and leases of the land and buildings directly chargeable to the contract shall be subject to approval by the Contracting Officer.
- (10) Repairs, maintenance, inspection, replacement and disposal of Government-owned property to the extent directed or approved by the Contracting Officer.
- (11) Repairs, maintenance and inspection of Contractor-owned property used in connection with the performance of this contract including reasonable standby facilities which are due to ordinary wear and tear from use and the action of the elements provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent

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expenses properly allocable to Contractor's performance of the work under each Task at a provisional rate or rates mutually agreed upon in writing by the Contractor and Contracting Officer, pending establishment from time to time of Contractor's actual overhead expenses and rates. Any such provisional rates and payment may be further adjusted either upward or downward from time to time as indicated to avoid anticipated over or under payments, but in any event all such provisional payments shall be adjusted as soon as reasonably practicable to Contractor's actual costs and rates when such are known and established. Such rates shall be set forth in a letter signed by the Contracting Officer and by the Contractor if acceptable to it. Appropriate monetary adjustments between provisional and actual amounts due shall be made by credits or refunds at the option of the Contracting Officer.

ARTICLE VIII ACCOUNTS, RECORDS AND INSPECTION

- (a) Accounts. The Contractor shall maintain accounts, records, documents and other evidence showing and supporting all allowable costs incurred, ~~or anticipated to be incurred,~~ revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to the Commission and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and Audit of Accounts and Records. All books of account and records relating to this contract shall be subject to inspection and audit by the Commission at all reasonable times, before and

shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property if and as directed by the Contracting Officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government on request all reasonable assistance in obtaining recovery.

- (h) Government Property for Government Use Only. Government Property shall be used only for the performance of this contract unless otherwise authorized by the Contracting Officer.

ARTICLE XI SUBCONTRACTS AND PURCHASE ORDERS

are set forth in detail in the Contractor's purchase manual. Revisions thereto

- (a) The Contractor may, and shall when directed by the Contracting Officer, enter into contracts (including subcontracts and purchase orders) in writing with third parties for the performance of any part of the work under Article II "Statement of Work and Reporting" of this contract. The methods, practices, or procedures used or to be used by the Contractor in contracting with third parties and in purchasing shall be subject to the prior written approval of the Contracting Officer. No contract or purchase order shall be entered into by the Contractor for items the purchase of which is expressly prohibited by written directions of the Contracting Officer.
- (b) Except as otherwise authorized by the Contracting Officer, the said practices will provide that:
- (1) The following contracts, the costs of which are chargeable directly to this prime contract, shall be subject to prior written approval of the Contracting Officer:

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- (i) Fixed-price contracts over \$25,000.00.
- (ii) Cost-type, time-and-material, or labor-hour contracts over \$500.00.
- (iii) Leases or rentals of personal property for use by Atomics International Division over \$1,000.00.
- (iv) Contracts providing for the purchase of patents or patent licenses, or for the direct payment of patent royalties.
- (v) Contracts containing any restriction on the use ^{or} of dissemination of supplies or technical information called for under the contract except as provided in Article XX entitled "Drawings, Designs, Specifications".
- (vi) Consultant or architect-engineer contracts.
- (vii) Contracts involving correction of an alleged mistake in bid where the mistake exceeds \$50.00 and is not an obvious clerical error.
- (viii) Research and development contracts.
- (ix) Changes or modifications to contracts approved pursuant to (i) through (vi) and (viii) above shall be subject to prior written approval of the Contracting Officer; provided, however, that in contracts of the types described in (i) through (iii) above, such prior written approval shall be required only if the changes increase the then current contract price by more than ten percent

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to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment, delay performance under the contract.

- (6) Include the Utilization of Small Business Concerns Article in subcontracts which offer substantial small business subcontracting opportunities.
- (7) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.
- (8) Submit ^{Quarterly} ~~semi-annual~~ reports of subcontracting to small business concerns on ~~AEC-SAN Form 80, Small Business Report~~, ^{either Optional Form 6, Small Business} or such other form as may be specified ^{in the contract.} by the Contracting Officer. Except as otherwise provided in this contract, the reporting requirements of this subparagraph (8) do not apply to small business contractors, small business subcontractors, educational and nonprofit institutions, and contractors or subcontractors for standard commercial items.
- (b) A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in paragraph 1-1.701 of the Federal Procurement Regulations.
- (c) The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting

ARTICLE XV

Subcontracting Program Quarterly Report of Participating Large Company on Subcontract Commitments to Small Business Concerns,

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to undertake for others. The Contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The Contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another Commission cost-type contractor under its contract with the Commission except with the prior approval of the Contractor.

ARTICLE XIX CONTRACTOR'S ORGANIZATION

- (a) As promptly as possible after the execution of this contract the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.
- (b) The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. The Contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in Atomic Energy Commission Procurement Regulations 9-12.54 ^(September 27, 1969 Ed.) and such standards and procedures shall be subject to the approval of the Contracting Officer.

ARTICLE XX DRAWINGS, DESIGNS, SPECIFICATIONS

- (a) All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs,

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negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies thereof (hereinafter referred to as "Technical Information"), relating to the work under this contract or to any part thereof, shall be subject to inspection by the Commission at all reasonable times (for which inspection the proper facilities shall be afforded the Commission by the Contractor and its subcontractors), shall be the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the Contractor and its subcontractors and vendors for additional compensation and shall, subject to the right of the Contractor to retain a copy of said Technical Information for its own use, be delivered to the Government, or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. The Contractor's right of retention and use of such Technical Information shall be subject to the

security and patent provisions, if any, of this contract, and, ~~except as specifically authorized by this contract, or as otherwise approved by the Contracting Officer, such Technical Information developed or acquired by or furnished the Contractor in the performance of this contract, shall be used only in connection with the work under this contract.~~ *Further, the Contractor's right of use is restricted to use in connection with performance of work under this or other cost type contracts with the Commission, unless prior approval is obtained from the Commission for other uses provided such approval shall not be required so long as the Contractor is in compliance with the reporting requirements of Article II.*

- (b) In addition to the rights of the parties in Technical Information set forth in paragraph (a), the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive license

respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE XXXIII LITIGATION AND CLAIMS

- (a) *If the Government requires the* Initiation of Litigation. ~~The Contractor may, with the prior Contracting Officer to initiate litigation, or if after notice written authorization of the Contracting Officer, and shall, upon thereof, the Contracting Officer approves the initiation of litigation the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract.~~ *by the Contractor, including proceedings before administrative agencies, in connection with this contract.* The Contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer.
- (b) Defense and Settlement of Claims. The Contractor shall give the Contracting Officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, and (2) of any claim against the Contractor, the cost and expense of which is allowable under the Article entitled "Allowable Costs and Fixed Fee." Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (1) Stop work under the contract on the date and to the extent specified in the Notice of Termination.
- (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (4) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) ~~With the approval or ratification of the Contracting Officer,~~

~~to the extent he may require,~~ which approval or ratification shall be final and conclusive for all purposes of this Article;

Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract; *provided that those in excess of \$10,000 arising out of such termination of orders or subcontracts shall be approved or ratified by the Contracting Officer;*

ARTICLE XXXIX

11/9
Can't
Does "approval"
and "ratification"
go to the
Contracting Officer?

INTERNAL LETTER
NORTH AMERICAN ROCKWELL CORPORATION
AEROSPACE AND SYSTEMS GROUP

Date . November 4, 1970

TO . File
Address .

FROM . L. W. Wheeler
Address . 55 798 LA33

Phone . 1404

Subject . Analysis of SAN Proposed Re-write of Contract No. AT(04-3)-701

The proposed re-write was proof read against Contract No. AT(04-3)-701. Attached is a copy of the re-write annotated to show the changes.

Attachment 1 lists the "0 - No change from current 701 language" articles and the changes which were made. All changes are of an editorial nature and acceptable.

Attachment 2 lists the "1 - Special 701 language changed in this draft" articles and indicates the pages where changes appear. In the attached annotated draft new language is underlined and old language which has been deleted is written in or referenced to the current Contract No. AT(04-3)-701.

Attachment 3 is an analysis of the "1 - Special 701 language changed in this draft" articles and conclusions on the acceptability of the changes.

Attachment 4 lists the "2 - AECPR language updated in this draft" articles and indicates the pages where changes appear.

Attachment 5 is an analysis of the "2 - AECPR language updated in this draft" articles and conclusions on the acceptability of the changes.

This complete package was reviewed in draft form with R. S. Gruhn on November 3, 1970.


L. W. Wheeler, Manager
Contracts and Pricing

cc: R. S. Gruhn

MODIFICATION NO. 4 - DRAFT

| | |
|---------------|---|
| ARTICLE I | No Change |
| ARTICLE IV | No Change |
| ARTICLE VI | p. 11 - words "Exclusive of Government Property" added to (d) (1). p. 13 - words "of Contractor's Atomics International Division" deleted in line 3 |
| ARTICLE VII | p. 25 - line 6 of (e) - (g) substituted for (f) |
| ARTICLE IV | No Change |
| ARTICLE X | No Change |
| ARTICLE XII | No Change |
| ARTICLE XIV | No Change |
| ARTICLE XVIII | No Change |
| ARTICLE XXI | p. 54 (b) - line 4 - the words "hereof" inserted |
| ARTICLE XXII | p. 57 (4) (i) - line 3 - "A" substituted for "B" p. 58 (ii) - line 3 - "A" substituted for "B" |
| ARTICLE XXIII | No Change |
| ARTICLE XXIV | p. 63 - "Exclusive of Government Property" added to title of article |
| ARTICLE XXV | No Change |
| ARTICLE XXVII | P. 68 - line 7 - "supplier" substituted for "supplied" |
| ARTICLE XXVII | No Change |
| ARTICLE XXIX | No Change |
| ARTICLE XXX | No Change |
| ARTICLE XXXI | No Change |
| ARTICLE XXXII | p. 71 -(a) - line 6 - "shall" substituted for "will" (b) - line 1 - "solicitations" substituted for "solicitation" (c) - line 6 - "clause" substituted for "article" p. 72 (f) - line 2 - "clause" substituted for "article" |

| | |
|-----------------|--|
| ARTICLE XXXIV | No Change |
| ARTICLE XXXV | No Change |
| ARTICLE XXXVI | No Change |
| ARTICLE XXXVII | No Change |
| ARTICLE XXXVIII | No Change |
| ARTICLE XLII | - p. 91 (a) (2) - line 4 - "Contractor" omitted from "-controlled" |
| ARTICLE XLIII | No Change |
| ARTICLE XLIV | No Change |
| ARTICLE XLVI | p. 105 - line 3 - "Services" changed to "Service" line 4 - "order" substituted for "contract" |
| ARTICLE XLVII | No Change |
| ARTICLE XLVIII | p. 106 - Contract AT(11-1)-GEN-8 spelled out Contract AT(04-3)-700 spelled out |
| ARTICLE XLIX | p. 107 - line 1 - Article "XLIII" changed to "XLIV" line 9 " " " " " line 15 " " " " " |

"1 - Special 701 language changed in this draft" - Listing

MODIFICATION NO. 4 - DRAFT

| | |
|--------------|--|
| ARTICLE II | p. 4 |
| ARTICLE III | p. 4, p. 5 |
| ARTICLE V | p. 6, p. 7, p. 8, p. 9 (p. 7 & p. 8 - re-lettering only) |
| ARTICLE VIII | p. 28, p. 30 |
| ARTICLE XI | p. 35, p. 36 |
| ARTICLE XX | p. 50 |
| ARTICLE XLV | p. 104 |

New language underlined, old language which has been deleted is added or a reference to current -701 is noted.

"1 - Special 701 language changed in this draft" - Analysis

- | | | | |
|----|--------|-------------------|--|
| 1. | p. 4 | Article II (b) | This change reviewed by Petersen and Wheeler. O.K. <i>See also a requirement for 701.</i> |
| 2. | p. 5 | Article III (a) | This changes the mutually acceptable Program Letter concept. It is not acceptable. We should propose to restore the mutually acceptable concept. |
| 3. | p. 5 | Article III (b) | This change drops the contract provision for reopening on contract terms and conditions by either party which shields AI against constant updating efforts by AEC. We should go back to the original language. |
| 4. | p. 9 | Article V (h) (2) | The requirement for preliminary program letters is dropped. Reviewed by Petersen and Wheeler. O.K. |
| 5. | p. 9 | Article V (h) (4) | This change drops the AEC best efforts obligation to keep the contract funded 90 days ahead of work. The change should not be made. |
| 6. | p. 28 | Article VII (a) | This change adds the "or anticipated to be incurred" words. We should attempt to get a clarification as to what they mean before agreeing. |
| | p. 30 | | This change is O.K. |
| 7. | p. 35 | Article XI | This change deletes the reference to our approved purchasing system. It should be referenced. |
| 8. | p. 50 | Article XX | This change incorporates standard AECPR which restricts use of contract data to contract work. We should request continuation of present Contract No. AT(04-3)-701 language. |
| 9. | p. 104 | Article XLV | This change is as recently agreed with SAN. O.K. |

"2 - AECPR language updated in this draft" - Listing

MODIFICATION NO. 4 - DRAFT

| | |
|----------------|----------------------------|
| ARTICLE XIII | p. 40, p. 41 |
| ARTICLE XV | p. 42, p. 43, p. 44, p. 45 |
| ARTICLE XVI | p. 45, p. 46 |
| ARTICLE XVII | p. 47, p. 48 |
| ARTICLE XL | p. 87 |
| ARTICLE XLI | p. 88, p. 89 |
| ARTICLE XXXIX | p. 78 |
| ARTICLE XIX | p. 49 |
| ARTICLE XXVI | p. 67 |
| ARTICLE XXXIII | p. 73 |
| ARTICLE L | p. 109 |

"2 - AECPR language updated in this draft" - Analysis

1. Article XIII Buy American
Same as Contract AT(04-3)-824. O.K.
2. Article XV Small Business Subcontracting Program
Same as Contract AT(04-3)-824 except the first sentence of (a)(8) which is not AECPR.

Gary Hollander (G.O.) advises that FPR is acceptable to G.O. Material. The new SAN form referenced is unknown to us so we will propose the standard AECPR we have accepted in Contract No. AT(04-3)-824.
3. Article XVI Utilization of Labor Surplus Area Concerns
New. O.K. Checked with Needham.
4. Article XVII Labor Surplus Area Subcontracting Program
Same as Contract AT(04-3)-824 except for paragraph (b) which is new and goes with the new Article XVI Utilization of Labor Surplus Area Concerns.

O.K. Checked with Needham.
5. Article XIX Contractor's Organization
Unchanged except for deletion of dated issue of AECPR 9-12.54 which is incorporated in Contract No. AT(04-3)-701.

Present issue of AECPR 9-12.54 dated September 1969 is acceptable but article should refer to it as previously.
6. Article XXVI Security
New. Was reviewed by AI Security when it came out in AECPR.
O.K.
7. Article XXXIII Litigation and Claims
First paragraph changed.

Not acceptable.

"2 - AECPR language updated in this draft" - Analysis (con't)

8. Article XL Price Reduction for Defective Cost or Pricing Data

Substantially the same as B.92 (p. 142A) of Air Force Basic Agreement No. F33657-69-A-0079 dated December 4, 1979.

O.K.

9. Article XLI Subcontractor Cost and Pricing Data

Same as Contract AT(04-3)-824.

O.K.

"3 - New Article" - Analysis

1. Article L Excusable Delays

Same as A. 12 (p. 12) of Air Force Basic Agreement No. F33657-69-A-0079 dated December 4, 1969.

Same as Article V of Contract AT(28-2)-2338 as modified by Mod. 6.

3 3

UNITED STATES
ATOMIC ENERGY COMMISSION
SAN FRANCISCO OPERATIONS OFFICE

2111 BANCROFT WAY
BERKELEY
CALIFORNIA 94704



ACTION
Wheeler

REPLY

REPLY
DUE:

REMARKS:
*Encls To
Wheeler*

OCT 9 1970

RECEIVED

OCT 12 1970

Correspondence Dept

| | | |
|--------------|------|--|
| Balent | LB07 | |
| Beeley | LB11 | |
| Botts | LB05 | |
| Breckenridge | NB09 | |
| Chew | LA13 | |
| Chalker | LB39 | |
| Cockeram | LA10 | |
| Coffman | DA14 | |
| Crossland | EB06 | |
| Dickinson | TO38 | |
| Dieckamp | LA04 | |
| Fritch | | |
| Flaherty | LA03 | |
| Gordon | LA08 | |
| Haberer | KB12 | |
| Holbrook | LA07 | |
| Jones, R.G. | JDO3 | |
| Kolin | LA35 | |
| Ladd, C.M. | LA16 | |
| Ladd, G.C. | LA01 | |
| Harris | Wash | |
| Martin | LA12 | |
| McKenzie | NB04 | |
| Moeller | LA17 | |
| Murray | LA02 | |
| Sham | MA07 | |
| Sins | LA11 | |
| Selman | LB44 | |
| Petersen | LA29 | |
| Phillips | DA06 | |
| Raborg | LA30 | |
| Remley | NA06 | |
| Saxe | LA06 | |
| Siegel | LA05 | |
| Spraul | KB05 | |
| Stoker | LB12 | |
| Trevillyan | | |
| Wethe | | |
| Wheeler | LA33 | |
| Williams | LB13 | |
| Wilson | LB01 | |
| 898 Corres. | B10 | |

Mr. L. W. Wheeler
Director, Contracts and Pricing
Atomics International
A Division of North American
Rockwell Corporation
Post Office Box 309
Canoga Park, California 91304

Subject: UPDATING OF CONTRACT NO. AT(04-3)-701

Dear Mr. Wheeler:

Enclosed are twelve (12) copies of a draft re-write of the "master" terms and conditions of task-type Contract No. AT(04-3)-701. The index of the contract has been annotated to indicate the articles in the draft which differ from those currently effective in Contract No. AT(04-3)-701.

We would appreciate receiving your comments (if any) on the enclosed draft by November 2, 1970.

Sincerely,

J. I. Bolson
J. I. Bolson
Deputy Director
Contracts Division

CON:LTB

Enclosure:
Draft Cont 701 (12)

V. Byrnes

K. Gruhn

2942AT

Comparative copy

*Enclosure
to 2942 AT*

MODIFICATION NO. 4
SUPPLEMENTAL AGREEMENT TO
CONTRACT NO. AT(04-3)-701

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- 0 - No change from current 701 language. - *listing*
- 1 - Special 701 language changed in this draft. - *list*
- 2 - AECPR language updated in this draft. - *list*
- 3 - New Article.

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MODIFICATION NO. 4
SUPPLEMENTAL AGREEMENT TO
CONTRACT NO. AT(04-3)-701

SUPPLEMENTAL AGREEMENT

This Supplemental Agreement entered into the ____ day of _____, 1970, effective _____, 1970, between the UNITED STATES OF AMERICA (hereinafter called the "Government") acting through the UNITED STATES ATOMIC ENERGY COMMISSION (hereinafter called the "Commission") and NORTH AMERICAN ROCKWELL CORPORATION (hereinafter called the "Contractor"), a corporation organized and existing under the laws of the State of Delaware, with its principal office located at El Segundo, California.

WITNESSETH THAT:

WHEREAS, the Contractor has, since May 1, 1948, conducted a program of research, development and other allied work in the field of atomic energy, all as set forth in Contract No. AT(11-1)-GEN-8 and predecessor and collateral contracts with the Commission prior to October 1, 1966, and in this Contract No. AT(04-3)-701 subsequent to October 1, 1966; and

WHEREAS, this contract has previously been amended by Modification Nos. 1 through 3; and

WHEREAS, the parties desire to continue the work under this Contract No. AT(04-3)-701, to further amend its basic terms and conditions and to incorporate the entire agreement of the parties concerning such basic terms and conditions into this one document, effective as to performance on and after _____, 1970; and

WHEREAS, the Commission certifies that this Supplemental Agreement is authorized by and executed under Section 302(c)(15) of the Federal Property

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SUPPLEMENTAL AGREEMENT TO
CONTRACT NO. AT(04-3)-701
Page 2

and Administrative Services Act of 1949, as amended, and Section 31c. of the Atomic Energy Act of 1954, as amended;

NOW, THEREFORE, the Commission and the Contractor agree that the basic terms and conditions of Contract No. AT(04-3)-701 (as distinguished from any Task thereunder), as previously amended, are hereby further amended in their entirety to read as follows with respect to performance by the Commission and the Contractor after _____, 1970, without in any way affecting the rights of the parties under prior basic terms and conditions of said contract for prior periods of time:

ARTICLE I DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

- (a) The term "Commission" means the United States Atomic Energy Commission or any duly authorized representative thereof, including the Contracting Officer, except for the purpose of deciding an appeal under the Article entitled "Disputes".
- (b) The term "Contracting Officer" means the person executing this contract or any Task on behalf of the Government, and includes his successors or any duly authorized representative of any such person.
- (c) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under any Task.
- (d) The term "Task" means any mutually agreed upon contractual arrangement for a separately identified area of work. Unless such Task

ARTICLE I

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expressly provides to the contrary, each such Task shall automatically incorporate the terms of this agreement therein, except for the incorporation in any Task or Tasks of any of the sections and provisions of Article XLII, which sections or provisions shall be incorporated or not to the extent expressly provided by Article XLII.

- (e) As employed herein for purposes of incorporation as provisions of individual Tasks the term "contract" (as used in Article VI of this agreement and in Article VIII and all subsequent articles when these articles are incorporated as provisions of individual Tasks) means "Task" unless the context in which the word is employed clearly conveys a different meaning.
- (f) The term "Program Letter" means any letter from the Contracting Officer or his representative so identified which provides detailed descriptions of work to be performed under a Task or Tasks from time to time including instructions or limitations pertinent to the work to be accomplished.

ARTICLE II STATEMENT OF WORK AND REPORTING

- (a) The Contractor shall furnish the materials, facilities, equipment, personnel, services, and all other necessary and incidental related items (subject, however, to Government option or agreement to furnish any such items under any other provision of this agreement or under any individual Task) for the performance, to the best of its ability, of a program of technical research, development, fabrication, evaluation, reporting, consulting, testing,

ARTICLE II

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Page 4

operation, and allied services as set forth in Tasks numbered
1 through 21 inclusive attached hereto and as may be subsequently set forth
from time to time in additional individually numbered Tasks.

(b) In accordance with guidance supplied by the Commission, the Contractor shall use its best efforts to assure that the significant results of classified and unclassified scientific and technical work performed under such Tasks are reported to the Commission.

The Contractor will furnish in a timely fashion under each Task such reports as are requested by the Commission. Such reports will be prepared and distributed in accordance with "Technical Information Guide", SAN 8002. *including, but not limited to, reporting in accordance with the document entitled "R&D Report Guidelines."*

ARTICLE III CONTRACT ADMINISTRATION AND TERM

(a) All Tasks hereunder shall be entered into by written agreement. Each Task shall set forth the scope of work to be performed thereunder; establish a date for expiration of the Task; establish the estimated cost and the fixed fee, if any, for an annual or any other designated period and may also set forth any special provisions or conditions applicable thereto. Amendments to Tasks or groups of Tasks may be combined in a single amendment, or amendments, for contracting convenience of the parties with the same effect as if entered into separately. The scope of work for any

ARTICLE III

In addition, the Contractor shall follow normal scientific and technical reporting procedures in the reporting of results through technical journals and scientific conferences. It is the intent of the Commission to cooperate with the Contractor in determining the necessary form, and frequency of such reports.

achieve

after the initiation thereof may be described in detail by mutually agreed upon Program Letter or Letters.

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Task for a designated period may be further delineated in a Program Letter which describes, in further detail, work to be performed during a designated period within the provisions of the Scope of Work set forth in such Task. Program Letters and Financial Plans will be transmitted to the Contractor by the Contracting Officer or his representative and for administrative convenience and efficiency may treat any or all Tasks in a single letter or plan.

- (b) This ^{contract} Supplemental Agreement shall be effective as of the date stated in the opening paragraph hereof and shall continue in effect until the most remote expiration date of any Task hereunder, unless sooner terminated as provided under this ^{contract} Supplemental Agreement or unless extended by mutual agreement of the parties.

(More to this article - see old -701)

*30 look
2 year period*

ARTICLE IV CHANGES

- (a) Changes and Adjustment of Fee. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of any Task requiring additional work or directing the omission of or variation in work covered by any Task. If any such direction results in a material change in the amount or character of the work described in any Task, an equitable adjustment of the fixed fee shall be made in accordance with the agreement of the parties and the Task shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting

ARTICLE IV

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Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under such Task. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes".

- (b) Work to Continue. Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

ARTICLE V ESTIMATES OF COST, OBLIGATION OF FUNDS, FIXED FEE, PROGRAM DEVELOPMENT AND FINANCIAL PLANS

- (a) Estimate of Cost, Fixed Fee and Obligation of Funds. The estimated cost of work, Contractor's fixed fee, if any, and the amount obligated by the Government with respect to each Task for an annual or other designated period shall be as set forth in such Task. Failure to agree upon any fee for any Task for any annual or other designated period, subsequent to the initial period thereof, shall be considered a question of fact for resolution in accordance with Article XXXVIII "Disputes".

*(b) has been
deleted
in
new mod ✓*

- (b) Initial Estimates of Cost, Fixed Fees and Obligations of Funds*
(b) Obligation of Funds. The amount obligated under each Task may be increased unilaterally by the Commission by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of the Task).
- (c) Limitation of Obligation. Payments on account of costs and fixed fee for each Task shall not in the aggregate at any time exceed the amount of funds obligated for such Task.

ARTICLE V

MODIFICATION NO. 4
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- (d) Notice of Costs Approaching Funds Obligated - Contractor Excused Pending Increase When Obligation is Reached. Whenever the Contractor has reason to believe that the total cost of the work under any Task (exclusive of the Contractor's fixed fee) will be substantially greater or less than the presently estimated cost of the work of that Task the Contractor shall promptly notify the Contracting Officer in writing. The Contractor shall also notify the Contracting Officer in writing when the aggregate of expenditures and outstanding commitments allowable under such Task, including the Contractor's fixed fee, is equal to ninety percent (90%) (or such other percentage as the Contracting Officer may from time to time establish by notice to the Contractor) of the amount of funds presently obligated therefor. When such expenditures and outstanding commitments, including the Contractor's fixed fee, equal one hundred percent (100%) of such amount the Contractor shall make no further commitments or expenditures under such Task (except to meet existing commitments) and shall be excused from further performance of the work under such Task unless and until the Contracting Officer thereafter shall increase the funds obligated with respect to such Task under this contract.
- (e) Government's Right to Terminate Not Affected. The giving of any notice by either party under this Article shall not be construed to waive or impair any right of the Government to terminate any or all Tasks under the provisions of the Article entitled "Termination".
- (f) Cost Information. The Contractor shall maintain current cost information adequate to reflect the cost of performing the work

MODIFICATION NO. 4
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under each Task at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.

- (g) Correctness of Estimates Not Guaranteed. Neither the Government nor the Contractor guarantees the correctness of any estimate of cost for performance of the work under a Task or Tasks, and there shall be no adjustment in the amount of the Contractor's fixed fee by reason of errors in the computation of estimates or differences between such estimates and the actual cost for performance of the work under such Task or Tasks.
- (h) Program Development and Financial Plans. Unless otherwise specified in any individual Task, it is the intent of the Contractor and the Commission to endeavor to agree in writing upon annual work programs for each Task. Procedures for the presentation of such work programs and cost estimates, compatible with the Commission's budget procedure, shall be developed in a manner acceptable to the Commission. In order to meet the requirements of Government budgetary practice, the parties agree:
- (1) As early as possible in each calendar year, the Commission will supply the Contractor with the dollar amounts for each continuing Task contained in the President's Budget for the ensuing Fiscal Year, with Program Assumptions which the Contractor will be expected to consider in its development of the related budget, together with all changes to existing Commission budget and accounting policies and procedures to be used in the current budget preparation.

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- ✓ (2) Upon or prior to July¹ of each year, or within a reasonable time thereafter, the Commission will issue to the Contractor for the current fiscal year a preliminary financial plan, *and, for each Task where required, a preliminary program letter.* As soon as reasonably practicable a definitive financial *and for each Task where required, a definitive program letter,* plan, will be issued by the Commission to the Contractor. *ok*
- (3) Financial plans may be amended or supplemented from time to time by the Contracting Officer. The financial plans will specify the funds available for work under any Task under the contract for the fiscal year. The Contractor shall use its best efforts to conform to the details of such financial plans. Additionally, in order to comply with applicable provisions of federal appropriations act and fiscal year controls, the Contracting Officer may inform the Contractor as to any special limitations on cost to be incurred in the performance of any Task under this contract, and the Contractor shall conform thereto.
- ✓ (4) A supplemental agreement to each Task will be executed periodically to obligate such additional funds as may be necessary. *see p. 6 of old mod for change*
- (5) During the course of this work, the Commission may review the currently authorized Tasks and costs and may revise the applicable Program Letter and/or Financial Plan. *back in*

ARTICLE V

ARTICLE VI ALLOWABLE COSTS AND FIXED FEE

- (a) Compensation for Contractor's Services. Payment for the allowable cost as hereinafter defined, and of the fixed fee, if any, as hereinafter provided shall constitute full and complete compensation for the performance of the work under this contract.
- (b) Fixed Fee. The fixed fee payable to the Contractor for the performance of the work under this contract is as established under the Article V immediately preceding.
- (c) Allowable Cost. The allowable cost of performing the work under this contract shall be the costs and expenses (less applicable income and other credits) that are actually incurred by the Contractor, are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the contract work in accordance with its terms and are determined to be allowable pursuant to this section (c). The determination of the allowability of cost hereunder shall be based on: (1) reasonableness, including the exercise of prudent business judgment, (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work and (3) recognition of all exclusions and limitations set forth in this Article or elsewhere in this contract as to types or amounts of items of cost. Allowable cost shall not include cost of any item described as unallowable in section (e) of this Article, except as indicated therein. Failure to mention an item of cost specifically in section (d) or section (e) shall not imply either that it is allowable or that it is unallowable.

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- (d) Examples of Items of Allowable Cost. Subject to the other provisions of this Article, the following examples of items of cost of work under this contract shall be allowable to the extent indicated:
- (1) Bonds and insurance (including self-insurance) as provided in the Article entitled "Required Bonds and Insurance - Exclusive of Government Property."
 - (2) Communication costs including telephone services, local and long distance telephone calls, telegrams, cablegrams, radiograms, postage and similar items.
 - (3) Consulting services (including legal and accounting) and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraph (e)(24).
 - (4) Litigation expenses, including reasonable counsel fees, incurred in accordance with the Article of this contract entitled "Litigation and Claims."
 - (5) Losses and expenses (including settlements made with the consent of the Contracting Officer) sustained by the Contractor in the performance of this contract and certified in writing by the Contracting Officer to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.
 - (6) Materials and supplies (including those withdrawn from common stores costed in accordance with any generally recognized method that is consistently applied by the Contractor and

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productive of equitable results) and equipment, including freight, transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approval required under other provisions of this contract.

- (7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer; and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with the Patent Article of this contract.
- (8) Personnel costs and related expenses incurred in accordance with the Contractor's established personnel policies and programs applicable throughout Contractor's aerospace and systems operations and communicated to the Contracting Officer in writing, or in accordance with collective bargaining contracts, or by custom in the industry or area, such as:
 - (i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, negotiating agreements with the Contractor, or serving on labor management

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(Contractor) committees: Provided, however, that the Contracting Officer's approval is required in each instance of total compensation to an individual employee^{of Contractor's Atomic & International Division} at an annual rate of \$25,000 or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under AEC cost-type contracts. Total compensation, as used here, includes only the employee's base salary and bonus and incentive compensation payments;

- (ii) legally required contributions to old age and survivors' insurance, unemployment compensation plans and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);
- (iii) travel (except foreign travel which requires specific approval by the Contracting Officer on a case-by-case basis); incidental subsistence and other allowances of Contractor employees, in connection with performance of work under this contract (including, new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);
- (iv) employee relations, welfare, morale, etc., programs, including incentive, patent and suggestion awards (excluding royalty sharing awards), employee counseling services, health or first-aid clinics and house or employee publications;

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- (v) personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case by case basis) including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills and to develop scientific and technical personnel in specialized fields required in the contract work;
- (vi) recruitment of personnel (including help-wanted advertisement) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the Contractor for employment interviews; and
- (vii) net cost of operating plant-site cafeterias, dining rooms, and canteens attributable to the performance of the contract.

Provided, however, that the following items of cost will be allowable only to the extent approved by the Contracting Officer: (A) salaries and wages for any employee paid in accordance with job classifications established specifically for use in connection with work under this contract; (B) salaries and wages for any employee directly chargeable to this contract paid, in the case of all work weeks scheduled and established in excess of 40 hours per week, for work in excess of 40 hours; (C) salaries and wages for any employee

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directly chargeable to this contract paid for occasional overtime in excess of eight hours beyond the scheduled work week; and (D) the costs of material changes in the Contractor's established personnel policies relating to Contractor's ~~Power Systems Divisions~~ or Atomics International Division which are not generally applicable throughout Contractor's aerospace and systems operations.

Copies of the Contractor's appropriate Corporate Directives, ~~Power Systems Divisions' Standard Operating Policies~~ and the Atomics International Division Standard Operating Policies, together with revisions thereto, will be made currently available to the Commission as issued by the Contractor.

- (9) Rentals and leases of land, buildings and equipment owned by third parties where such items are used in the performance of the contract, except that rentals and leases of the land and buildings directly chargeable to the contract shall be subject to approval by the Contracting Officer.
- (10) Repairs, maintenance, inspection, replacement and disposal of Government-owned property to the extent directed or approved by the Contracting Officer.
- (11) Repairs, maintenance and inspection of Contractor-owned property used in connection with the performance of this contract including reasonable standby facilities which are due to ordinary wear and tear from use and the action of the elements provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent

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value or appreciably prolong its intended useful life; and major repairs (including replacement) to such property, as directed or approved by the Contracting Officer when charged directly to the contract.

- (12) Special tooling, including jigs, dies, fixtures, molds, patterns, designs and drawings, tools, and equipment of a specialized nature generally useful to the Contractor only in the performance of this contract.
- (13) Subcontracts and purchase orders including purchases from Contractor controlled sources, subject to approvals required by other provisions of this contract.
- (14) Subscriptions to trade, business, technical, and professional periodicals, as approved by the Contracting Officer when charged directly to the contract.
- (15) Taxes, fees and charges levied by public agencies which the Contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.
- (16) Utility services including electricity, gas, water, steam and sewerage.
- (17) The costs of preparing bids and proposals to the extent approved by the Contracting Officer, but not to exceed 1% of the direct material and direct labor costs of the contract work.

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- (18) General research and development costs incurred for Contractor's general research projects to the extent approved by the Contracting Officer as providing a direct or indirect benefit to the contract work and subject to such conditions as may be imposed by the Contracting Officer.
- (19) Allocations of general office administrative expenses, including incentive compensation, upon a basis of reimbursement accepted by the Government agency having primary cognizance thereof. If the Contracting Officer finds that the allocation of such expenses creates a major inequity with respect to proper allocation in the performance of the work under this contract, he shall so notify the Contractor and any disagreement between the Contractor and the Contracting Officer, with respect to the allocation of such expenses, shall be deemed a dispute as to a question of fact and shall be disposed of in accordance with Article XXXVIII of the contract entitled "Disputes".
- (e) Examples of Items of Unallowable Costs. The following examples of items of costs are unallowable under this contract to the extent indicated:
- (1) Advertising, except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the Contracting Officer as clearly in furtherance of work performed under the contract.
 - (2) Bad debts (including expenses of collection) and provisions for bad debts not arising out of the performance of this contract.

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- (3) Bonuses and similar compensation under any other name paid to Atomics International employees, which (i) are not pursuant to an agreement between the Contractor and employee prior to the rendering of the services or an established plan consistently followed by the Contractor, (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.
- (4) Commissions, bonuses and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the Contractor for the purpose of obtaining Government business.
- (5) Contingency reserves, provisions for (except provisions for reserves under a self-insurance program to the extent that the type, coverage, rates and premiums would be allowable if commercial insurance were purchased to cover the same risk, as approved by the Contracting Officer).
- (6) Contributions and donations.
- (7) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line, declining balance (using a rate not

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exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method) or sum-of-the-years-digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life. Amortization or depreciation of unrealized appreciation of values of assets or of assets fully amortized or depreciated on the Contractor's books of account is unallowable.

- (8) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profits.
- (9) Entertainment costs, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in this contract.
- (10) Fines and penalties, including assessed interest, resulting from violations of, or failure of the Contractor to comply with Federal, state, or local laws, or regulations, except when incurred in accordance with the written approval of the Contracting Officer or as a result of compliance with the provisions of this contract.
- (11) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of the Commission applicable to transfers of such property to the Contractor from others.
- (12) Insurance (including any provision of a self-insurance reserve) on any person where the Contractor under the insurance policy

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is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined in the Article entitled "Government Property."

- (13) Interest, however represented (except interest incurred in compliance with the Article entitled "State and Local Taxes"), bond discounts and expenses, and costs of financing and refinancing operations.
- (14) Legal, accounting, and consulting services, and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and except as approved by the Contracting Officer prosecution or defense of patent-infringement litigation.
- (15) Losses (including litigation expenses, counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the Contractor's contributed portion under cost-sharing contracts; losses in connection with price reduction to and discount purchases by employees and others from any source except as approved by the Contracting Officer; and losses where such losses or expenses--
 - (i) are compensated for by insurance or otherwise, or which would have been compensated by insurance required by law or by written direction of the Contracting Officer

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but which the Contractor failed to procure or maintain through its own fault or negligence, or which could have been covered by permissible insurance in keeping with ordinary business practice but which the Contractor failed to secure or maintain;

- (ii) result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, corporate officers, or a supervising representative of the Contractor, as defined in the Article of this contract entitled "Government Property";
 - (iii) represent liabilities to third persons for which the Contractor has expressly accepted responsibility under other terms of this contract.
- (16) Maintenance, depreciation, and other costs incidental to the Contractor's idle or excess facilities (including machinery and equipment) other than reasonable standby facilities.
 - (17) Membership in trade, business, and professional organizations except as approved by the Contracting Officer.
 - (18) Precontract costs, except as expressly made allowable under other provisions in this contract.
 - (19) Reconversion, alteration, restoration, or rehabilitation of the Contractor's facilities, except as expressly provided elsewhere in this contract.

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- (20) Research and development costs, unless specifically provided for elsewhere in this contract.
- (21) Selling costs, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the Contractor's product for agency use.
- (22) Storage of records pertaining to this contract after completion of operations under this contract irrespective of contractual or statutory requirement for the preservation of records.
- (23) Taxes, fees and charges in connection with financing, re-financing, or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the Article entitled "State and Local Taxes;" Federal taxes on net income and excess profits; and special assessments on land which represent capital improvement.
- (24) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with the Commission, except to

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the extent that cash payment therefor is required pursuant to the provisions of this contract or procedures of the Commission applicable to the borrowing of such an individual from another cost-type Contractor.

- (25) First-class air travel in excess of the cost of less than first-class air accommodations, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as, where less than first-class accommodations would:
- (i) Require circuitous routing,
 - (ii) Require travel during unreasonable hours,
 - (iii) Greatly increase the duration of the flight,
 - (iv) Result in additional costs which would offset the transportation savings,
 - (v) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

ARTICLE VII PAYMENTS

- (a) Payments On Account of Allowable Costs. Once each month (or at more frequent intervals, if approved by the Contracting Officer) the Contractor may submit to the Contracting Officer, in such form and reasonable detail as he may require, an invoice or voucher supported by a statement of costs incurred by the Contractor in the performance of each Task under this contract and claimed

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to constitute allowable costs. Promptly after receipt of each invoice or voucher the Government shall, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer.

- (b) Payments On Account of Fixed Fee and Provisional Fee. The fixed fee shall become due and payable in periodic installments in amounts based on the proportion of the work under each Task then completed as determined by the Contracting Officer. In making such periodic payments there shall be retained 15 percent from each payment which retained amount shall, to the extent based upon the fee for each Task, be paid upon the completion and acceptance of all work under each Task. Provided, however, the Contracting Officer shall unless reasonable cause to the contrary exists, make payments of any of the remaining periodic installments of the fixed fee in full at any time that the total amount of the retained fee for all Tasks equals One Hundred Thousand Dollars (\$100,000).

Pending the availability of sufficiently definitive cost estimates as will permit negotiation of the fixed fee (if any) for continuing work under any Task, the parties shall agree upon provisional fees for such work based upon the then best estimates of cost of performance of said continuing work. To the extent the parties agree upon the amount of provisional fees, the Commission shall make monthly payments against such provisional fees. Prompt adjustment shall be made for the difference between such monthly payments of the provisional fees and the pertinent fees when specific final fees have been established.

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- (c) Review and Approval of Costs Incurred. The Contractor shall prepare and submit annually as of June 30 a voucher, for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the voucher, and the Commission, after audit and appropriate adjustment, will approve such voucher. This approval by the Commission will constitute an acknowledgment by the Commission that the net costs incurred are allowable under each and every Task and that they have been recorded in the accounts maintained by the Contractor in accordance with the Commission accounting policies, but will not relieve the Contractor of responsibility for the Commission's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to the Commission.
- (d) Audit Adjustments. At any time or times prior to settlement under any Task the Contracting Officer may have invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.
- (e) Completion Voucher. On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" for any Task and upon compliance by the Contractor with all the provisions of the Task (including, without limitation, the provisions relating to patents and provisions of (g) below) the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee which

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has been withheld pursuant to (b) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under any Task but in no event later than one (1) year (unless within the year the Contracting Officer grants a further specific period of time) from the date of such completion.

- (f) **Applicable Credits.** The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under a Task shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under such Task. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer.
- (g) **Financial Settlement.** Prior to final payment under any Task, the Contractor and each assignee under such Task whose assignment is in effect at the time of final payment under such Task shall execute and deliver:
- (1) An assignment to the Government in form and substance satisfactory to the Contracting Officer of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under the Task; and
 - (2) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims

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arising out of or under such Task, subject only to the following exceptions:

- (i) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;
 - (ii) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of performance of the Task; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and
 - (iii) claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the Task relating to patents.
- (h) Provisional Overhead Rates. The Contractor shall be provisionally reimbursed at monthly intervals (or more frequent intervals if approved by the Contracting Officer) for its overhead costs and

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expenses properly allocable to Contractor's performance of the work under each Task at a provisional rate or rates mutually agreed upon in writing by the Contractor and Contracting Officer, pending establishment from time to time of Contractor's actual overhead expenses and rates. Any such provisional rates and payment may be further adjusted either upward or downward from time to time as indicated to avoid anticipated over or under payments, but in any event all such provisional payments shall be adjusted as soon as reasonably practicable to Contractor's actual costs and rates when such are known and established. Such rates shall be set forth in a letter signed by the Contracting Officer and by the Contractor if acceptable to it. Appropriate monetary adjustments between provisional and actual amounts due shall be made by credits or refunds at the option of the Contracting Officer.

ARTICLE VIII ACCOUNTS, RECORDS AND INSPECTION

- what does this mean?*
- (a) Accounts. The Contractor shall maintain accounts, records, documents and other evidence showing and supporting all allowable costs incurred or anticipated to be incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to the Commission and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and Audit of Accounts and Records. All books of account and records relating to this contract shall be subject to inspection and audit by the Commission at all reasonable times, before and

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during the period of retention provided for in (d) below, and the Contractor shall afford the Commission proper facilities for such inspection and audit.

- (c) Audit of Subcontractors' Records. With respect to any subcontracts (including lump-sum or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable by the Contractor to the subcontractor, the Contractor accepts the responsibility for determination of the amount payable. The Commission will conduct or arrange for the conduct of an audit of the costs of the subcontractor.
- (d) Disposition of Records. Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable and revenues and other applicable credits under this contract in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three (3) years after settlement of the contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.
- (e) Reports. The Contractor shall furnish such progress reports and schedules, financial and costs reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
- (f) Inspections. The Commission shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.

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(g) Subcontracts.

(1) The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this Article in the following kinds of subcontracts:

(i) Subcontracts under the terms of which costs incurred are a factor in determining the amount payable to the subcontractor.

(ii) Subcontracts (under cost-type subcontracts) under the terms of which costs incurred are a factor in determining the amount payable to the sub-subcontractor.

(2) The Contractor further agrees to include:

✓
(i) In each firm fixed-price subcontract in excess of \$100,000 (except firm fixed-price subcontracts under the circumstances prescribed in (2) below) an audit clause, the substance of which is the audit clause under paragraph (d)(2) of FPR 1-3.814-2(c) *with paragraph (a) of such audit clause modified by adding the quoted language in AECPR 9-3.814-2(a).*

OK
(ii) In each firm fixed-price subcontract in excess of \$100,000, where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or prices set by law or regulation, an audit clause, the substance of which is the "Audit-Price Adjustments" clause under paragraph (d) ⁽²⁾ of FPR 1-3.814-2(c) *with paragraph (b) of such "Audit-Price Adjustments" clause modified by adding the quoted language in AECPR 9-3.814-2(a).*

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ARTICLE IX EXAMINATION OF RECORDS

- (a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract unless the Commission authorizes their prior disposition.
- (b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract unless the Commission authorizes their prior disposition. The term "subcontract" as used in this Article excludes (1) purchase orders not exceeding \$2500 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- (c) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

ARTICLE X GOVERNMENT PROPERTY

- (a) **Furnishing of Government Property.** The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

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- (b) Title to Property. Title to all property furnished by the Government shall remain in the Government except as otherwise provided in this Article. Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer may direct. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the Contractor title to which vests in the Government under this paragraph are hereinafter referred to as Government Property. Title to Government Property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.
- (c) Identification. To the extent directed by the Contracting Officer, the Contractor shall identify Government Property coming into

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the Contractor's possession or custody by marking or segregation in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.

- (d) Disposition. The Contractor shall make such disposition of Government Property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer shall direct. When authorized in writing by the Contracting Officer during the progress of the work or upon completion or termination of this contract, the Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the amount of the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract, or shall be otherwise credited to account of the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract the Contractor shall render an accounting, as prescribed by the Contracting Officer, of all Government Property which has come into the possession or custody of the Contractor under this contract.
- (e) Protection of Government Property - Classified Materials. The Contractor shall take all reasonable precautions, as directed by the Contracting Officer, or in the absence of such directions in accordance with sound industrial practice, to safeguard and protect Government Property in the Contractor's possession or custody. Special measures shall be taken by the Contractor in

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the protection of and accounting for any classified or special materials involved in the performance of this contract, in accordance with the regulations and requirements of the Commission.

- (f) Risk of Loss of Government Property. The Contractor shall not be liable for loss or destruction of or damage to Government Property in the Contractor's possession unless such loss, destruction, or damage results from wilful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or unless such loss, destruction or damage results from a failure on the part of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written directives of the Contracting Officer to safeguard such property under paragraph (e) hereof. The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers, and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (1) all or substantially all of the Contractor's business; or (2) all or substantially all of the Contractor's operation at any one plant or separate location at which this contract is being performed; or (3) a separate and complete major industrial operation in connection with the performance of this contract; or (4) a separate and complete major construction, alteration, or repair operation in connection with performance of this contract.
- (g) Steps to be Taken in Event of Loss. Upon the happening of any loss or destruction of or damage to Government Property in the possession or custody of the Contractor the Contractor shall immediately inform the Contracting Officer of the occasion and extent thereof,

shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property if and as directed by the Contracting Officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government on request all reasonable assistance in obtaining recovery.

- (h) Government Property for Government Use Only. Government Property shall be used only for the performance of this contract unless otherwise authorized by the Contracting Officer.

ARTICLE XI SUBCONTRACTS AND PURCHASE ORDERS

- part of substance*
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are or will be set forth in detail in Section 1. of the Contractor's Atomic International Division Material Division Manual which, together with all revisions thereof
- (a) The Contractor may, and shall when directed by the Contracting Officer, enter into contracts (including subcontracts and purchase orders) in writing with third parties for the performance of any part of the work under Article II "Statement of Work and Reporting" of this contract. The methods, practices, or procedures used or to be used by the Contractor in contracting with third parties and in purchasing ~~delivered~~ shall be subject to the prior written approval of the Contracting Officer. No contract or purchase order shall be entered into by the Contractor for items the purchase of which is expressly prohibited by written directions of the Contracting Officer.

(b) Except as otherwise authorized by the Contracting Officer, the said practices ^{manual} will provide that:

- (1) The following contracts, the costs of which are chargeable directly to this prime contract, shall be subject to prior written approval of the Contracting Officer:

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- (i) Fixed-price contracts over \$25,000.00.
- (ii) Cost-type, time-and-material, or labor-hour contracts over \$500.00.
- (iii) Leases or rentals of personal property for use by Atomic International Division over \$1,000.00.
- (iv) Contracts providing for the purchase of patents or patent licenses, or for the direct payment of patent royalties.
- (v) Contracts containing any restriction on the use ^b of dissemination of supplies or technical information called for under the contract except as provided in Article XX entitled "Drawings, Designs, Specifications".
- (vi) Consultant or architect-engineer contracts.
- ✓ (vii) Contracts involving correction of an alleged mistake in ^a bid where the mistake exceeds \$50.00 and is not an obvious clerical error.
- (viii) Research and development contracts.
- (ix) Changes or modifications to contracts approved pursuant to (i) through (vi) and (viii) above shall be subject to prior written approval of the Contracting Officer; provided, however, that in contracts of the types described in (i) through (iii) above, such prior written approval shall be required only if the changes increase the then current contract price by more than ten percent

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(10%) and by more than \$100.00. Changes or modifications to a contract not previously approved which make it a contract of the type described in (i) through (viii) above shall also be subject to prior written approval.

- (x) Notwithstanding the foregoing itemization, any other individual commitment which the Contracting Officer requests shall be submitted for his approval.
- (c) Unless otherwise approved in writing by the Contracting Officer, all contracts with third parties under this contract including subcontracts and purchase orders (except contracts of employment) shall be reduced to writing, shall be made in the name of the Contractor, shall not bind or purport to bind the Government or the Commission (except purchase orders against Government sources of supply), and shall not relieve the Contractor of any obligation under this prime contract (including, among other things, the obligation properly to supervise and coordinate the work of subcontractors). All contractual commitments under this prime contract shall be in such form and contain such provisions as are required by this contract.
- (d) Effect of Subcontracting on Fee. The subcontracting of any part of the work under this contract shall not entail any adjustment in the Contractor's fixed fee unless this contract has been entered into on the understanding, expressly stated in the clause entitled "Statement of Work and Reporting", that such part of the work would not be subcontracted, and in that event an equitable downward

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adjustment in the fixed fee shall be made and the contract shall be modified in writing accordingly. A failure to agree on an equitable adjustment under this paragraph shall be deemed to be a dispute within the meaning of the clause entitled "Disputes".

- (e) Prior to initiation of any procurement action for acquisition of equipment estimated to cost in excess of \$2,000.00, the Contractor shall obtain the approval of the Contracting Officer.

ARTICLE XII PURCHASES FROM CONTRACTOR-CONTROLLED SOURCES

- (a) All solicitation of competitive bids for equipment, materials and supplies of the kind and character manufactured or sold by the divisions, departments, or affiliates of the Contractor, all evaluation thereof, and all awards shall be made solely by the Contracting Officer, unless otherwise authorized by the Contracting Officer. In all such cases in which the Contractor has design responsibility, the Contractor shall prepare proper specifications, drawings, and such other data as may be necessary, on a basis which will permit fair and open competition and orderly and timely procurement with relation to the work.
- (b) The Contractor may procure on a negotiated basis, subject to the limitations in this paragraph and subparagraph (1) or (2) as applicable, materials, supplies, equipment, or services manufactured or sold by the Contractor's divisions, departments, or affiliates from such divisions, departments or affiliates; provided, however, that unless otherwise authorized by the Contracting Officer, no such procurement shall be made by the Contractor without prior written approval of the Contracting Officer.

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- (1) Standard commercial articles and standard supplies (of Contractor-controlled sources, other than those manufactured or produced within the contracting component) which have published unit prices of less than one hundred dollars (\$100), or such higher amount as may be approved by the Contracting Officer, may be transferred and charged at amounts not in excess of (i) the net sales price concurrently charged the most favored nonaffiliated customer for such articles in the same quantities, or (ii) the lowest net sales price at which equivalent articles are available from other sources, whichever is lower in price without further negotiation as to unit price. If the Contractor does not meet this requirement, any excess cost occasioned thereby is unallowable. The Contracting Officer may require use of the equivalent articles available from other sources at a lower price or the solicitation of competitive bids from other suppliers of such articles. "Standard commercial articles" are those produced by the Contractor in the normal course of business, carried in stock or previously manufactured on a production basis, and having catalog item numbers and prices; "Standard supplies" are those carried in stock for use in normal operation.

- (2) All other articles produced or services performed by Contractor-controlled sources shall be provided on the basis of allowable cost without additional fee, and subject to the terms of this contract; provided, however, that if mutually agreed, they may be furnished at fixed prices firmed at the outset; provided further, that any such fixed prices shall

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be negotiated on the basis of estimated allowable costs under this contract, without profit.

ARTICLE XIII BUY AMERICAN ACT

- (a) In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this Article^{clause}:
- (1) "Components" means those articles, materials, and supplies which are directly incorporated in the end products;
 - (2) "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and
 - (3) A "domestic source end product" means (i) an unmanufactured end product which has been mined or produced in the United States and (ii) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States^{or Canada} exceeds 50 percent of the cost of all its components. For the purposes of this (a)(3)(ii), components of foreign origin of the same type or kind as the products referred to in (b)(2) or (3) of this Article^{clause} shall be treated as components mined, produced, or manufactured in the United States.
- (b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

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- (1) Which are for use outside the United States;
- (2) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;
- (3) As to which the ^{Secretary} Commission determines the domestic preference to be inconsistent with the public interest; or
- (4) As to which the ^{Secretary} Commission determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.) *2 sentences deleted - See p. 14-Basic Agree.*

ARTICLE XIV UTILIZATION OF SMALL BUSINESS CONCERNS

- (a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.
- (b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

ARTICLE XV SMALL BUSINESS SUBCONTRACTING PROGRAM

- (a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall -

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- ✓
- (1) Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the Utilization of Small Business Concerns ^{clause} Article, and (iii) administer the Contractor's "Small Business Subcontracting Program."
 - (2) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.
 - (3) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small business concerns. Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
 - (4) Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this ^{clause} Article, and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding \$10,000, information substantially as follows:
 - (A) Whether the award went to large or small business.
 - (B) Whether less than three or more than two small business concerns were solicited.

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- (C) The reason for nonsolicitation of small business if such was the case.
- (D) The reason for small business failure to receive the award if such was the case when small business was solicited.

✓
The records maintained in accordance with (iii) above may be in such form as the ^{individual} Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this ^{clause} Article will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other Article of this contract or by applicable law or regulation.

- ✓
(5) Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts and Purchase Orders" ^{clause} Article in this contract. Such notice will state the Contractor's reasons for nonsolicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give ^{Small Business Administration} SBA timely notice to permit SBA a reasonable period

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to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment, delay performance under the contract.

- ✓ (6) Include the Utilization of Small Business Concerns ^{clause} Article in subcontracts which offer substantial small business subcontracting opportunities.
- (7) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.
- ✓ (8) Submit semi-annual reports of subcontracting to small business concerns on AEC-SAN Form 80, Small Business Report, or such other form as may be specified by the Contracting Officer. Except as otherwise provided in this contract, the reporting requirements of this subparagraph (8) do not apply to small business contractors, small business subcontractors, educational and nonprofit institutions, and contractors or subcontractors for standard commercial items.

✓ (b) A "small business concern" is a concern that meets the pertinent criteria established by the ^{SBA} Small Business Administration and set forth in paragraph ^{1-701 of the Armed Services} 1-1.701 of the Federal Procurement Regulations.

(c) The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting

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program, this contract may be terminated, in whole or in part, for default.

- ✓ (d) The Contractor further agrees to insert, in any subcontract hereunder which ^{is in excess of} may exceed \$500,000 and which contains the Utilization of Small Business Concerns ^{clause} Article, provisions which shall conform substantially to the language of this ^{clause} Article, including this paragraph (d), and to notify the Contracting Officer of the names of such subcontractors; *see p. 82 - Basic Agree.*

ARTICLE XVI UTILIZATION OF LABOR SURPLUS AREA CONCERNS

- ✓ (a) It is the policy of the Government to award contracts to labor surplus area concerns that (1) have been certified by the Secretary of Labor (hereafter referred to as certified-eligible concerns with first or second preferences) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially (i) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas or (ii) in other areas of the United States, respectively, or (2) are noncertified concerns which have agreed to perform substantially in persistent or substantial labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.
- ✓ (b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small
- see p. 82 - Basic Agree.*

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Business Concerns" the Contractor in placing his subcontracts shall observe the following order of preference: (1) Certified-eligible concerns with a first preference which are also small business concerns; (2) other certified-eligible concerns with a first preference; (3) certified-eligible concerns with a second preference which are also small business concerns; (4) other certified-eligible concerns with a second preference; (5) persistent or substantial labor surplus area concerns which are also small business concerns; (6) other persistent or substantial labor surplus area concerns; and (7) small business concerns which are not labor surplus area concerns.

ARTICLE XVII LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

- (a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall -
- (1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the Utilization of Concerns in Labor Surplus Areas Article, and (iii) administer the Contractor's "Labor Surplus Area Subcontracting Program";
 - (2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

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- (3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;
- (4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this ^{clause} Article. Records maintained pursuant to this Article will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other Article of this contract or by applicable law or regulations; and
- (5) Include the Utilization of Concerns in Labor Surplus Areas ^{clause} Article in subcontracts which offer substantial labor surplus area subcontracting opportunities.

- For subcontracting purposes,*
- (b) A "labor surplus area concern" is a concern that (1) has been certified by the Secretary of Labor (hereafter referred to as a certified-eligible concern) regarding the employment of a proportionate number of disadvantaged individuals and has agreed to perform substantially in or near sections of concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas of the United States or (2) is a non-certified concern which has agreed to perform a substantial proportion of a contract in persistent or substantial labor surplus areas. A certified-eligible concern shall be deemed to have performed a substantial proportion of a contract in or near sections of

ARTICLE XVII

concentrated unemployment or underemployment, in persistent or substantial labor surplus areas, or in other areas if the costs that the concern will incur on account of manufacturing or production in or near such sections or in such areas (by itself, if a certified concern, or by certified concerns acting as first-tier subcontractors) amount to more than 25 percent of the contract price. A concern shall be deemed to have performed a substantial proportion of a contract in persistent or substantial labor surplus areas (by itself or its first-tier subcontractors) if the costs that the concern will incur on account of production or manufacturing in such areas amount to more than 50 percent of the contract price.

- (c) The Contractor further agrees ^{with respect to} to insert, in any subcontract here-
under which, may exceed \$500,000 and which contains, the Utilization
of Concerns in Labor Surplus Areas. Article, provisions, which shall
conform substantially to the language of this Article, including
this paragraph (c), and, to notify the Contracting Officer, of the
names of such subcontractors. ^{the clause entitled} ^{clause}

ARTICLE XVIII CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES OF
CONTRACTOR EMPLOYEES

The Contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with the Commission) on the contract work to disclose to the Contractor all consultant or other comparable employment services which the employees propose

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to undertake for others. The Contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The Contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another Commission cost-type contractor under its contract with the Commission except with the prior approval of the Contractor.

ARTICLE XIX CONTRACTOR'S ORGANIZATION

- (a) As promptly as possible after the execution of this contract the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.
- (b) The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. The Contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in Atomic Energy Commission Procurement Regulations 9-12.54 ^(January 1966 Ed. as amended April 18, 1966 AECPR Circulars 1 and 2) and such standards and procedures shall be subject to the approval of the Contracting Officer.

ARTICLE XX DRAWINGS, DESIGNS, SPECIFICATIONS

- (a) All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs,

ARTICLES XIX & XX

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negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies thereof (hereinafter referred to as "Technical Information"), relating to the work under this contract or to any part thereof, shall be subject to inspection by the Commission at all reasonable times (for which inspection the proper facilities shall be afforded the Commission by the Contractor and its subcontractors), shall be the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the Contractor and its subcontractors and vendors for additional compensation and shall, subject to the right of the Contractor to retain a copy of said Technical Information for its own use, be delivered to the Government, or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. The Contractor's right of retention and use of such Technical Information shall be subject to the security and patent provisions, if any, of this contract, and, except as specifically authorized by this contract, or as otherwise approved by the Contracting Officer, such Technical Information developed or acquired by or furnished the Contractor in the performance of this contract, shall be used only in connection with the work under this contract.

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- (b) In addition to the rights of the parties in Technical Information set forth in paragraph (a), the Contractor agrees to and does hereby grant to the Government an irrevocable nonexclusive license

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and right, subject to the limitations of paragraph (c), to use any secret process, technical information, or know-how of the Contractor, made, developed, or acquired prior to or on the effective date of expiration or completion of this contract, which is incorporated in any conceptual design, process or prototype upon which substantial research, development, design, or other technological work is performed under this contract while such secret process, technical information or know-how is incorporated therein.

- (c) As a limitation upon paragraph (b), it is agreed that to the extent that any secret process, technical information or know-how of the Contractor referred to in paragraph (b) is specifically identified as "proprietary company confidential information" by the Contractor when furnished or delivered to the Commission, the same shall not be used except by or for the United States Government, for purposes of (i) use in the production or utilization of special nuclear material or atomic energy, or (ii) in furtherance of those objectives of Commission programs upon which specific research and development is conducted under this contract, or (iii) by or for the Commission.

(1) (i) throughout the world (other than in the United States) only in facilities, apparatus or installations

(A) owned or operated by, or

(B) constructed by or for (either solely or jointly with other interests) and with the substantial expenditure of funds by, the U.S. Government and

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(ii) in the United States :

(2) (i) by making, using, and having made and used items embodying the same, or substantially the same, said conceptual design or prototype or by the operation of the same, or substantially the same, said conceptual process, and

(ii) by selling and having sold items embodying said conceptual design or prototype or adapted to conduct said conceptual process, as surplus or condemned public property as provided by law.

The foregoing "proprietary company confidential information" shall not be disclosed to third parties except as necessary for the exercise of the rights granted under paragraph (b), and provided that the Commission obtains the agreement of such third parties to such limited use. The Government may use for any purpose whatsoever any such secret process, technical information or know-how which is generally available to the public, has been made available to the Government from other sources, or was previously furnished or delivered by the Contractor without limitation as to the particular use proposed by the Government.

(d) Except as otherwise authorized in writing by the Commission, the Contractor will insert a provision similar to paragraph (a) in all subcontracts, purchase orders, and consultant agreements which require a patent provision pursuant to Article XXII. Any such subcontract, purchase order or consultant agreement containing a provision similar to paragraph (c) will require Commission approval.

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- (e) Except as otherwise authorized in writing by the Commission, any subcontract or purchase order which requires the original preparation or development and the furnishing of Technical Information, but which does not require a patent provision pursuant to Article XXII, shall include a provision requiring that the original Technical Information required to be furnished may be used by the Government for any purpose whatsoever without any claim on the part of the subcontractor for any additional compensation.
- (f) Except as otherwise authorized in writing by the Commission, the requirements of paragraphs (d) and (e) shall not apply to subcontracts or purchase orders not requiring the original development or preparation of the furnishing of Technical Information, such as subcontracts or purchase orders for standard commercial items or supplies. The Contractor may recognize as "proprietary company confidential information" any technical information furnished under such a subcontract or purchase order, provided such Technical Information is submitted in accordance with and meets the requirements of paragraph (c).
- (g) Any Technical Information furnished under any subcontract or purchase order may be used by the Government for any purpose whatsoever without any claim on the part of the subcontractor or vendor for any additional compensation unless such Technical Information is submitted in accordance with and meets the requirements of paragraph (c). A provision similar to paragraph (c) may be inserted by the Contractor under appropriate circumstances in all subcontracts and purchase orders performed under this contract, but will not be employed as a routine procedure except as provided by paragraph (e).

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ARTICLE XXI COPYRIGHTS

- (a) The Contractor (1) agrees that the Commission shall determine the disposition of the title to and the rights under any copyright secured by the Contractor or its employees on copyrightable material first produced or composed under this contract and (2) hereby grants to the Government a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others so to do, all copyrighted or copyrightable work not first produced or composed by the Contractor in the performance of this contract but which is incorporated in the material furnished under the contract, provided that such license shall be only to the extent the Contractor now has, or prior to the completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.
- (b) The Contractor agrees that it will not knowingly include any copyrighted material in any written or copyrightable material furnished or delivered under this contract, without a license as provided for in paragraph (a)(2) hereof, or without the consent of the copyright owner, unless specific written approval of the Contracting Officer to the inclusion of such copyrighted material is secured.
- (c) The Contractor agrees to report in writing to the Commission, promptly and in reasonable detail, any notice or claim of copyright infringement received by the Contractor with respect to any material delivered under this contract.

ARTICLE XXI

ARTICLE XXII PATENTS

- (a) Whenever any invention or discovery is made or conceived by the Contractor or its employees in the course of or under this contract, the Contractor shall promptly furnish the Commission with complete information thereon; and the Commission shall have the sole power to determine whether or not and where a patent application shall be filed, and to determine the disposition of the title to and rights in and to any invention or discovery and any patent application or patent that may result; provided:
- (1) The Contractor, in any event, shall retain at least a non-exclusive, irrevocable, royalty-free license under any such invention, discovery, patent application, or patent, and
 - (2) If the Commission determines not to file, the Contractor may file any United States patent application, subject to Commission security requirements and regulations, and
 - (3) If the Contractor, when furnishing the complete information as to any such invention or discovery, advises the Commission that it will file thereon at its own expense, subject to security requirements and regulations, a U.S. patent application within six (6) months of so furnishing said information and any designated foreign patent application(s), the Contractor shall retain:
 - (i) At least a nonexclusive, irrevocable, paid-up license for all purposes in any such U.S. patent application or U.S. patent issued thereon, and,

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- (ii) All right, title, and interest in any such foreign patent application or patent issued thereon, subject to:
- (A) A nonexclusive, irrevocable, paid-up license to the U.S. Government for U.S. governmental purposes and with the right of the U.S. Government to grant licenses to foreign governments for purposes of governmental use by such foreign governments pursuant to a treaty or agreement with the U.S. Government or an agency thereof.
 - (B) Granting, upon request, nonexclusive royalty-free licenses to U.S. citizens, and to U.S. corporations when 75 percent or more of the voting interest is owned by U.S. citizens, for use in the production or utilization of special nuclear material or atomic energy; and agreeing to grant to foreign users and purchasers of the product of such a U.S. licensee a license to use such product, or to sell such product to an assignee of the business or plant where such product is used or as surplus, at a reasonable, non-discriminatory royalty ordinarily to be at no greater rate than Contractor has charged any other foreign licensee.
 - (C) The right of the Contractor to grant such other licenses in accordance with applicable statutes and regulations, provided:

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- (aa) That if the Contractor grants any licenses other than as provided in (B) above, the same shall be for a reasonable royalty or compensation, and
- (bb) That if, after three years of the issuance of a particular foreign patent, Contractor, its assignee or any licensee cannot demonstrate, upon Commission request, the practical application of the subject matter covered by such foreign patent, the Contractor or its assignee shall, at the Commission's request, grant licenses in any such foreign patent to others for a reasonable royalty.
- (iii) If the Contractor does not desire to prosecute the U.S. patent application or any foreign application or maintain any foreign patent, the Contractor, prior to abandonment thereof, shall afford the Commission an opportunity to assume prosecution of any such patent application or maintain any such patent, and
- (4) (i) That with respect to any said invention, discovery, patent application or patent pertaining to the categories of technology listed in Appendix ^{"B"}"A" of this contract, the Contractor shall retain at least a sole (except as against the Government or its account), irrevocable, royalty-free license with the sole right to grant sublicenses, under such invention, discovery, patent

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application or patent, such license and sublicensing rights being limited to the manufacture, use and sale for purposes other than use in the production or utilization of special nuclear material or atomic energy.

- (ii) It is agreed that the Commission will from time to time consider any other categories proposed by the Contractor for addition to said Appendix "A".
- (5) Subject to the licenses retained by the Contractor, as provided in this paragraph (a), the judgment of the Commission on these matters shall be accepted as final; and the Contractor, for itself and for its employees, agrees that the inventor or inventors will execute all documents and do all things necessary or proper to carry out the judgment of the Commission.
- (b) With respect to every invention or discovery in which the Contractor is granted the principal or any exclusive rights under paragraph (a):
- (a):
- (1) The Contractor agrees to provide written reports at reasonable intervals when requested by the Commission as to:
- (i) The commercial use that is being made or is intended to be made of such invention or discovery; and
- (ii) the steps taken by the Contractor to bring the invention to a point of practical application or to make the invention or discovery available for licensing.
- (2) The Contractor agrees to and does hereby grant to the Commission:

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- (i) The right to require the granting of nonexclusive, royalty-free licenses to applicants on any such invention or discovery unless the Contractor, or its transferee or assignee, demonstrates to the Commission, on request, that the Contractor, or its transferee or assignee, has taken effective steps within three (3) years after a patent issues on such invention or discovery to bring the invention or discovery to a point of practical application, or has granted licenses thereon free or on reasonable terms, or can show cause why the Contractor, or its transferee or assignee, should retain the principal or exclusive right for a further period of time; and
 - (ii) the right to grant licenses royalty-free or on reasonable terms to the extent that any such invention or discovery is required for public use by governmental regulations, or as may be necessary to fulfill health needs, or for other public purposes stipulated in this contract.
- (c) No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Contractor or its employees with respect to any invention or discovery made or conceived in the course of or under this contract.
- (d) Except as otherwise authorized in writing by the Commission, the Contractor will obtain patent agreements to effectuate the purposes of paragraphs (a), (c), (d), (e), and (h), and the first two sentences of paragraph (f) of this Article from all persons who perform

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any part of the work under this contract, except such clerical and manual labor personnel as will not have access to Technical Information relating to the work under this contract or to any part thereof.

- (e) Except as otherwise authorized in writing by the Commission, the Contractor will insert in all subcontracts and purchase orders, other than purchase orders for standard commercial supplies, provisions making paragraphs (a), except for the license and foreign right, title and interest provisions thereof, (c), (d), (e), and (h), and the first two sentences of paragraph (f) applicable to the subcontractor or vendor and its employees.
- (f) It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to publish, within the limits of security requirements, information regarding scientific or technical developments made or conceived in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interest of the Commission, patent approval for release and publication shall be secured from the Commission prior to any such release or publication. However, such patent approval need not be secured for publication of information regarding scientific or technical developments which in the Contractor's judgment does not contain patentable subject matter, provided that the Contractor transmits to the Commission, no later than the time such information is first dispatched by the Contractor toward publication, written notice of such judgment together with a copy of such information, and provided further that the Contractor

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transmits to the Commission (Chief, California Patent Group) promptly after the end of each calendar quarter a listing of all formal technical reports generated under this contract (including those technical reports corresponding to the NAA-SR, NAA-SR-MEMO, and NAA-SR-TDR series under Commission Contract No. AT(11-1)-GEN-8) during said calendar quarter.

- (g) In addition to the rights of the parties under the foregoing paragraphs in and to inventions or discoveries made or conceived in the course of or under this contract, the Contractor agrees and does hereby grant to the Government an irrevocable, nonexclusive paid-up license in and to each invention or discovery owned or controlled by the Contractor actually reduced to practice before the effective date of the contract and in and to each invention or discovery actually reduced to practice or acquired during the contract period but not subject to the provisions of paragraph (a),
- (1) which is incorporated in any conceptual design, process, or prototype upon which substantial research, development, design, or other technological work is performed under this contract while such invention or discovery is so incorporated therein,
 - (2) to practice by or for the United States Government such incorporated invention or discovery, for purposes of use in the production or utilization of special nuclear material or atomic energy, or in furtherance of those objectives of Commission programs upon which specific research and development is conducted under this contract, or for use by or for the Commission,

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(1) (A) Throughout the world (other than in the United States) only in facilities, apparatus, or installations

(aa) owned or operated by, or

(bb) constructed by or for (either solely or jointly with other interests) and with the substantial expenditure of funds by, the United States Government and

(B) in the United States:

(ii) (A) by making, using, and having made and used items embodying the same or substantially the same said conceptual design or prototype or by the operation of the same or substantially the same said conceptual process, and

(B) by selling and having sold items embodying said conceptual design or prototype or adapted to conduct said conceptual process, as surplus or condemned public property as provided by law.

The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity, or scope of, or the title to, any rights of patents herein licensed.

(h) With respect to any U.S. patent application filed by the Contractor on any invention or discovery made or conceived in the course

of or under this contract, the Contractor will incorporate in the first paragraph of such application the following statement:

"The invention described herein was made in the course of, or under, a contract (if desired, may substitute contract with identifying number) with the U.S. Atomic Energy Commission."

ARTICLE XXIII PERMITS

Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the State, territory, and political subdivision in which the work under this contract is performed.

ARTICLE XXIV REQUIRED BONDS AND INSURANCE - EXCLUSIVE OF GOVERNMENT PROPERTY

As a minimum, the Contractor shall procure and maintain such bonds and insurance as are required by law or by the written directions of the Contracting Officer, and the terms of such bonds and insurance policies, the costs of which are charged to the contract as a direct charge, shall be submitted to the Contracting Officer for prior approval. The Contractor shall notify the Contracting Officer promptly of the types of other bonds and insurance procured or maintained, for the cost of which the Contractor will request reimbursement either directly or indirectly. In view of the Article of this contract entitled "Government Property", the Contractor shall not be reimbursed for the cost of any insurance (including self-insurance or reserves) covering loss or destruction of or damage to Government-owned property.

ARTICLE XXV STATE AND LOCAL TAXES

- (a) The Contractor agrees to notify the Commission of any state or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Commission has advised the Contractor, is or may be inapplicable or invalid; and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Commission. Any state or local tax, fee, or charge paid with the approval of the Commission or on the basis of advice from the Commission that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
- (b) The Contractor agrees to take such action as may be required or approved by the Commission to cause any state or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Commission to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Contractor. If the Commission directs the Contractor to institute litigation

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to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this Article, the procedures and requirements of the Article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the Contractor shall be allowable items of cost, as provided in this contract, together with the amount of any judgment rendered against the Contractor.

- (c) The Government shall save the Contractor harmless from penalties and interest incurred through compliance with this Article. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

ARTICLE XXVI SECURITY

- Security matter*
- (a) Contractor's Duty to Safeguard Restricted Data, Formerly Restricted Data, and Other Classified Information. In the performance of the work under this contract, the Contractor shall, in accordance with the Atomic Energy Commission's security regulations and requirements, be responsible for safeguarding Restricted Data, Formerly Restricted Data, and other classified ^{matter} information and protecting against sabotage, espionage, loss, and theft, the classified documents and material, ^{equipment, processes, etc. as well as such other} in the Contractor's possession in connection ^{with} the performance of work under this contract. Except as otherwise expressly provided in ^{the specifications} this contract, the Contractor shall, upon completion or termination of this contract, transmit to the ^{the Government} ~~the Government~~ ^{as may be}

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Commission any classified matter in the possession of the Contractor or any person under the Contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the Contracting Officer, the Contractor will complete a certificate of possession to be furnished to the Atomic Energy Commission specifying the classified matter to be retained. (The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter and the period of retention, if known.) If retention is approved by the Contracting Officer, the security provisions of the contract will continue to be applicable to the matter retained.

- (b) Regulations. The Contractor agrees to conform to all security regulations and requirements of the Commission.
- (c) Definition of Restricted Data. The term "Restricted Data," as used in this ^{Article} clause, means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954.
- (d) Definition of Formerly Restricted Data. The term "Formerly Restricted Data," as used in this clause, means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

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^d
(e) Security Clearance of Personnel. The Contractor shall not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required.

^e
(f) Criminal Liability. It is understood that disclosure of Restricted Data, Formerly Restricted Data, or other classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, ^{or any Top Secret, Secret, or Confidential} Formerly Restricted Data, or any other classified matter that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, ^{68 Stat. 919,} as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 10501, as amended.) ^{(See also Executive order 10101 of Feb. 1950, 15 F.P.R. 547).}

^f
(g) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

ARTICLE XXVII CLASSIFICATION

In the performance of the work under this contract, the Contractor shall assign classifications to all documents, material and equipment originated or generated by the Contractor in accordance with classification

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guidance furnished to the Contractor by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material or equipment, shall include a provision to the effect that in the performance of such subcontract or purchase order the subcontractor or supplier shall assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished to such subcontractor or ^{supplied} supplier by the Contractor.

ARTICLE XXVIII CONTRACT WORK HOURS STANDARDS ACT - OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Contract Work Hours Standards Act (40 U.S.C. 327-330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

- (a) Overtime Requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

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- (b) Violations; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).
- (c) Withholding for Unpaid Wages and Liquidated Damages. The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).
- (d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this Article in all subcontracts, and shall require their inclusion in all subcontracts of any tier.
- (e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

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ARTICLE XXIX WALSH-HEALEY PUBLIC CONTRACTS ACT

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

ARTICLE XXX NOTICE OF LABOR DISPUTES

Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work the Contractor shall immediately notify the Contracting Officer in writing. Such notice shall include all relevant information concerning the dispute and its background.

ARTICLE XXXI CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

ARTICLE XXXII EQUAL OPPORTUNITY

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60).)

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During the performance of this contract, the Contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action ^{will} shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.
- (b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity ^{article} clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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- (d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the Contractor's noncompliance with the Equal Opportunity ^{Article} clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with

respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE XXXIII LITIGATION AND CLAIMS

- See p. 44-701*
- (a) Initiation of Litigation. The Contractor ~~may~~, with the prior written authorization of the Contracting Officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The Contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer. *old language*
- (b) Defense and Settlement of Claims. The Contractor shall give the Contracting Officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, and (2) of any claim against the Contractor, the cost and expense of which is allowable under the Article entitled "Allowable Costs and Fixed Fee." Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the

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extent not in conflict with any applicable policy of insurance, the Contractor may with the Contracting Officer's approval settle any such action or claim, shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor, and, if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the Contractor is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith; and in such event the defense of the action shall be at the expense of the Government: Provided, however, that the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

ARTICLE XXXIV COVENANT AGAINST CONTINGENT FEES

- (a) Warranty - Termination or Deduction for Breach. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or

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contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- (b) Subcontracts and Purchase Orders. Unless otherwise authorized by the Contracting Officer in writing, the Contractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract.

ARTICLE XXXV OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE XXXVI ASSIGNMENT

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Contracting Officer.

ARTICLE XXXVII RENEGOTIATION

If this contract is subject to the Renegotiation Act of 1951, as amended, the following provisions shall apply:

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- (a) This contract is subject to the Renegotiation Act of 1951 (50 U.S.C. App. 1211, et seq.), as amended, and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this Article shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing, this contract shall be deemed to contain all the provisions required by section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.
- (b) The Contractor agrees to insert the provisions of this Article, including this paragraph (b), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951, as amended.

ARTICLE XXXVIII DISPUTES

- (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Commission. The decision of the Commission or its duly authorized representative for the determination of

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such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this Article, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

- (b) This "Disputes" Article does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: Provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

ARTICLE XXXIX TERMINATION

- (a) The performance of work under the contract may be terminated by the Government in accordance with this Article in whole, or from time to time in part:
- (1) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting

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Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

- (2) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the Contractor was not in default pursuant to (1), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor, ^(10 lines omitted - see p. 47 - 701) pursuant to the provisions of the Article of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

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(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (1) Stop work under the contract on the date and to the extent specified in the Notice of Termination.
- (2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (4) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

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- (5) ~~With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this Article.~~

Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract; provided that claims in excess of \$70,000 arising out of such termination of order or subcontracts in excess of \$70,000 shall be approved or ratified by the Contracting Officer, ←

ARTICLE XXXIX

Change requested by Kellen

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- (6) Transfer title to the Government (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination; (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government; and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;
- (7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: Provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: And provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

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- (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this Article. At any time after expiration of the plant clearance period, as defined in subpart 1-8.1 of the Federal Procurement Regulations (41 CFR 1-8.1), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: Provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

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- (c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- (d) Subject to the provisions of paragraph (c), and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this Article. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

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(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(1) If the settlement includes cost and fee —

- (i) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: Provided, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs;
- (ii) There shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the terminated portion of the contract;

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- (iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: Provided, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and
- (iv) There shall be included therein a portion of the fee payable under the contract determined as follows:
- (A) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or
- (B) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee as the total amount of work performed and accepted by the Government bears to the total work called for by this contract.

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If the amount determined under this subparagraph (1) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

- (2) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (1)(iv) above.
- (f) The Contractor shall have the right of appeal, under the Article of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.
- (g) In arriving at the amount due the Contractor under this Article there shall be deducted (1) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor

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or sold pursuant to the provisions of this Article and not otherwise recovered by or credited to the Government.

- (h) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.
- (i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this Article, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: Provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

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- (j) The provisions of this Article relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

ARTICLE XL PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

- (a) If the Contracting Officer determines that any price, including profit or fee, negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data - Price Adjustments," or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in ^{The} his Contractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing ^{as may be necessary} to reflect such reduction.
- (b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

*See p. 147A
Price Agree.*

(Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor ^(Sentence omitted) to appropriately indemnify the Contractor. It is also expected that any subcontractor subject to such indemnification will generally require

substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.)

ARTICLE XLI SUBCONTRACTOR COST AND PRICING DATA

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

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see p. 142B -
Price Agree.
- (1) Prior to award of any cost-reimbursement type, time and material, labor-hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed \$100,000; and
 - (2) Prior to the award of any other subcontract, the price of which is expected to exceed \$100,000 or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract, or subcontract change or modification.

- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in each of his cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds \$100,000 ^{except where} unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder ^{in excess of} which exceeds \$100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST AND PRICING DATA
PRICE ADJUSTMENTS

- (a) Paragraphs (b) and (c) of this ^{clause} Article shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of \$100,000. The requirements of this ^{clause} Article shall be limited to such price adjustments.
- (b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

- (1) Prior to award of any cost-reimbursement type, time and material, labor-hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed \$100,000; and

ARTICLE XLI

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See P. 142B
Basic Agree

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(2) Prior to award of any other subcontract, the price of which is expected to exceed \$100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed \$100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this ^{Clause} Article including this paragraph (d) in each subcontract hereunder which exceeds \$100,000.

ARTICLE XLII NUCLEAR HAZARDS INDEMNITY AND INDEMNITY ASSURANCE PROVISIONS

To the extent expressly referenced in any Task or Tasks, either or both of the following sections shall be incorporated therein and made applicable

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thereto; provided, however, that without any said express incorporation, the provisions of Section A below shall nonetheless be deemed applicable in the event public liability, as hereafter defined, should arise out of activities under a Task to which Section A shall not have been made expressly applicable, if such Task included the operation or use by the Contractor of a nuclear reactor or if it included any work, the performance of which would have entitled the Contractor, in the Commission's judgment under the Commission's published regulations and criteria at the time any such liability may arise, to nuclear hazards indemnification under Section 170(d) of the Atomic Energy Act of 1954, as amended.

SECTION A - NUCLEAR HAZARDS INDEMNITY

- (a) This Article is incorporated into this contract pursuant to the authority contained in subsection 170(d) of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).
- (1) The definitions set out in the Act shall apply to this Article.
 - (2) The term "contract location" means any Commission facility, installation, or site at which contractual activity under this contract is being carried on, and any Contractor-owned or ^{Contractor} -controlled facility, installation, or site at which the Contractor is engaged in the performance of contractual activity under this contract.
 - (3) The term "extraordinary nuclear occurrence" means an event which the Commission has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear

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occurrence will be made in accordance with the procedures in Subpart E of 10 CFR 140.

- (b) Except as hereafter permitted or required in writing by the Commission, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. The Commission may at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, provided that the costs of such financial protection will be reimbursed to the Contractor by the Commission.
- (c) (1) To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by the Commission, the Commission will indemnify the Contractor, and other persons indemnified, against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable costs of investigating and settling claims, and defending suits for damage for such public liability, provided that the Commission's liability, including such reasonable costs, under all indemnity agreements entered into by the Commission under section 170 of the Act, including this contract, shall not exceed \$500,000,000 in the aggregate for each nuclear incident occurring within the United States or \$100,000,000 in the aggregate for each nuclear incident occurring outside the

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United States, irrespective of the number of persons indemnified in connection with this contract.

- (2) The public liability referred to in paragraph (c)(1) of this section is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of or results from:
- (A) A nuclear incident which takes place at a contract location; or
 - (B) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the Contractor's employees, individual consultants, borrowed personnel or other persons for the consequences of whose acts or omissions the Contractor is liable, provided that such incident is not covered by any other indemnity agreement entered into by the Commission pursuant to section 170 of the Act; or
 - (C) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or byproduct materials to or from a contract location; provided such incident is not covered by any indemnity agreement entered into by the Commission with the transporting carrier, or with a carrier's organization acting for the benefit of the transporting carrier, or with a licensee of the Commission, pursuant to section 170 of the Act; or

ARTICLE XLII

(D) A nuclear incident which involves items (such as equipment, material, facilities, or design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by the Commission pursuant to section 170 of the Act.

(d) In the event of an extraordinary nuclear occurrence which:

- (1) Arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, or
- (2) Arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, or
- (3) During the course of the contract activity arises out of or results from the possession, operation, or use by the Contractor or a subcontractor of a device utilizing special nuclear material or byproduct material,

the Commission, and the Contractor on behalf of itself and other persons indemnified, insofar as their interests appear, each agree to waive:

- (A) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

- (i) Negligence;
- (ii) Contributory negligence;
- (iii) Assumption of the risk;
- (iv) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, "conduct of the claimant" includes conduct of persons through whom the claimant derives his cause of action;

- (B) Any issue or defense as to charitable or governmental immunity;
- (C) Any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than ten years after the date of the nuclear incident.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

- (e) The waivers set forth in paragraph (d) of this Article:

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- (1) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;
- (2) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;
- (3) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place if benefits therefor are either payable or required to be provided under any workmen's compensation or occupational disease law;
- (4) Shall not apply to any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law;
- (5) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;
- (6) Shall be effective only with respect to those obligations set forth in this agreement and in insurance policies, contracts, or other proof of financial protection;

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- (7) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e. of the Atomic Energy Act of 1954, as amended, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.
- (f) The Contractor shall give immediate written notice to the Commission of any known action or claim filed or made against the Contractor or other person indemnified for public liability as defined in paragraph (2) of section (c). Except as otherwise directed by the Commission, the Contractor shall furnish promptly to the Commission copies of all pertinent papers received by the Contractor or filed with respect to such actions or claims. When the Commission shall determine that the Government will probably be required to make indemnity payments under the provisions of section (c) above, the Commission shall have the right to, and shall, collaborate with the Contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right (1) to require the prior approval of the Commission for the payment of any claim that the Commission may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that the Commission may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the

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Contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

- (g) The indemnity provided by this Article shall not apply to public liability arising out of or in connection with any activity that is performed at a licensed facility, and that is covered by a Commission indemnity agreement authorized by Section 170 of the Act.
- (h) The obligations of the Commission under this Article shall not be affected by any failure on the part of the Contractor to fulfill its obligation under this contract, and shall be unaffected by the death, disability, or termination of existence of the Contractor or by the completion, termination or expiration of this contract.
- (i) The parties to this contract enter into this Article upon the condition that this Article may be amended at any time by the mutual written agreement of the Commission and the Contractor and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.
- (j) The provisions of this Article shall not be limited in any way by, and shall be interpreted without reference to, any other provision of this contract (including Disputes): Provided, however, That the following provisions of this contract: Covenant Against Contingent Fees, Officials Not to Benefit, Assignment, Examination of Records, and any provisions later added to this contract which, under applicable Federal law, including statutes, Executive Orders and regulations,

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are required to be included in agreements of the type contained in this Article, shall apply to this Article.

SECTION B - INDEMNITY ASSURANCE

- (a) (1) The definitions set out in the Atomic Energy Act of 1954, as amended (hereinafter called the Act), shall apply to this article.
- (2) The services or supplies furnished under this agreement are intended to be used in connection with the construction and/or operation of a production or utilization facility.
- (3) The Commission will use its best efforts to include in any contract for the operation of such facility, an agreement based on the then current approved form of indemnity agreement under section 107d of the Atomic Energy Act of 1954, as amended, whereby the Commission will indemnify all persons indemnified, including the Contractor, against public liability for nuclear incidents arising out of or in connection with contractual activities under the contract for the operation of said facility, in accordance with the authority provided in subsection 170d of the Act.
- (4) (A) The Commission will enter into an indemnity agreement, in accordance with the authority provided in subsection 170d of the Act, with the Contractor, without further consideration from the Contractor, at any time when all of the following circumstances are present:

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- (i) The services or supplies furnished under this contract are being used in connection with any activity or situation which involves a risk of substantial nuclear incident; and
 - (ii) There is not in effect an indemnity agreement as described in section (3) of this clause, and
 - (iii) The Commission's authority to enter into agreements of indemnification under section 170(d) of the Act has not expired or been so amended as to deprive the Commission of authority to enter into such an agreement.
- (B) In that agreement the Commission will indemnify the Contractor and other persons indemnified against public liability arising out of or in connection with the contractual activity of this contract.
- (C) Such agreement will be based on the then current approved form of section 170d indemnity agreement used in contracts between the Commission and its contractors, and shall further include an obligation to indemnify the Contractor, and persons indemnified, for such public liability arising out of or resulting from nuclear incidents occurring between the time when the services or supplies furnished under this contract are first used in connection with any activity or situation which involves risk of a substantial nuclear incident and the time when such agreement is executed.

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- (D) The indemnity provided by the Commission under all indemnity agreements entered into by the Commission under section 170 of the Act, including this agreement, shall not exceed \$500,000,000 in the aggregate for each nuclear incident, without regard to the number of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damages, provided, however, that with respect to incidents occurring outside the United States such aggregate indemnity shall not exceed \$100,000,000, including such reasonable costs.

ARTICLE XLIII NUCLEAR REACTOR SAFETY

- (a) The activities under certain tasks include the operation of nuclear reactors and the Contractor recognizes that such operation involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety. In the operation of the nuclear reactors, the Contractor will exercise a degree of care commensurate with the risk involved.
- (b) The Contractor shall comply with all applicable regulations of the Commission concerning nuclear reactor safety and with those requirements (including reporting requirements and instructions) of the Commission concerning nuclear reactor safety of which it is notified in writing by the Contracting Officer.
- (c) Prior to the initial start-up of any nuclear reactor under any Task and prior to any subsequent start-up following a change which represents a significant deviation from the procedures, equipment,

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or analyses described in the safety analysis report for that reactor, the Contractor shall:

- (1) Prepare a safety analysis report and detailed plans and procedures designed to assure the safe operation and maintenance of the reactor. These will generally cover, but not be limited to: prestart-up check lists; normal operations of the reactor and supporting auxiliaries; maintenance operation; emergency situations; and technical standards for equipment and systems.
 - (2) Establish nuclear safety control procedures to be used within the Contractor's organization to insure appropriate review and internal approval of the detailed plans and procedures specified in (1) above.
 - (3) Submit to the Contracting Officer for his approval such procedures relating to nuclear safety as may be designated by him.
 - (4) Carry out a training program designed to assure that all personnel who will be engaged in the operations or maintenance of a nuclear reactor understand the approved plans and procedures for nuclear safety pertinent to their assignments.
 - (5) Obtain the approval of the Contracting Officer prior to such start-up of the reactor.
- (d) In the operation and maintenance of any nuclear reactor under any Task, the Contractor shall:

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- (1) Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel and, except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified to appraise any emergency condition and take prompt effective action with respect thereto.
- (2) Operate the reactors within the operating limits which may be prescribed by the Contracting Officer. The Contracting Officer will consult with the Contractor in formulating and revising such operating limits.
- (3) Follow strictly the procedures relating to nuclear safety approved by the Contracting Officer as specified in (c)(3) above and submit to the Contracting Officer for his approval any proposed changes in such procedures.
- (4) Establish a system of inspection approved by the Contracting Officer (including review of inspection reports by competent technical personnel) that will (i) provide frequent and periodic checks of reactor performance and of the qualifications and training of operating and maintenance personnel and (ii) provide for investigation of any unusual or unpredicted reactor conditions that might affect the safe operation of the reactor.
- (5) Report promptly to the Contracting Officer any change in the physical condition of the reactor or its operating characteristics that might in the judgment of the Contractor affect the safe operation of the reactor.

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- (6) Shut down the reactor immediately whenever so instructed by the Contracting Officer, or whenever, in the judgment of the Contractor, the risk of a nuclear incident endangering persons or property warrants such action.
- (7) Prepare, in cooperation with other services and facilities available at the site and with the approval of the Contracting Officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons on the site; cooperate with the Contracting Officer in his preparation of a plan to protect the public off the site; instruct its personnel as to their participation in such plans and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.

ARTICLE XLIV KEY PERSONNEL

Key personnel designated by the Contractor and agreed to by the Commission as responsible for critical development programs shall not be reassigned or removed without the consent of the Contracting Officer unless the Contractor replaces such employee with an employee of substantially equal abilities and qualifications.

ARTICLE XLV SAFETY, HEALTH, AND FIRE PROTECTION

OK
To the extent that any work hereunder is performed at the Santa Susana site, as that site is defined in Article XLIX - SPECIAL PROPERTY PROVISIONS, the following shall apply:

see p. 62 - old contract for deletion
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The Contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of employees and of members of the public and to minimize danger from all hazards to life and property, and shall comply with all health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission. In the event that the Contractor fails to comply with said regulations or requirements of the Commission, the Contracting Officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter a start order for resumption of work may be issued at the discretion of the Contracting Officer. The Contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

ARTICLE XLVI PRIORITIES, ALLOCATIONS, AND ALLOTMENTS

The Contractor shall follow the provisions of DMS Regulation 1 and all other applicable regulations and orders of the Business and Defense Services Administration in obtaining controlled materials and other products and materials needed to fill this ^{contract} order.

ARTICLE XLVII SOURCE AND SPECIAL NUCLEAR MATERIALS

- (a) The Contractor shall establish and maintain a system of control over any source and/or special nuclear material furnished by the Government under this contract. This system shall be capable of providing current and accurate quantitative information concerning the receipt, the disposition and the availability of such

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materials. Where applicable, these data shall be generated from appropriate measurement and analytical procedures. The Contractor's system and methods shall be subject to review and approval by the Commission. The Contractor shall segregate and accumulate all economically recoverable source and special nuclear materials generated under this contract and shall periodically report such scrap to the Commission. Further disposition of such materials shall be at the Commission's direction; provided, however, that any reprocessing by the Contractor of these materials shall be subject to mutual agreement of the parties.

- (b) The Commission shall have the right to inspect, verify and survey all source and special nuclear material held by the Contractor under this contract or otherwise.

ARTICLE XLVIII RELATIONSHIP TO PRECEDING CONTRACTUAL ARRANGEMENTS

The work under this contract and Contract No. AT(04-3)-700 involves in part the continuation of work commenced and performed under a preceding contract between the parties designated as Contract No. AT(11-1)-GEN-8. It is agreed that the work performed under said Contract No. AT(11-1)-GEN-8 prior to the execution date of this contract shall be governed by the terms of the said Contract No. AT(11-1)-GEN-8, except as may otherwise be agreed in writing of the same or a subsequent date. Unless otherwise agreed, all property, materials, subcontracts, and data generated or acquired under Contract No. AT(11-1)-GEN-8 shall be deemed transferred to this contract or Contract No. AT(04-3)-700 as the parties may agree, for use thereunder.

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ARTICLE XLIX SPECIAL PROPERTY PROVISIONS

The parties hereto have provided in Article ^{XLIII} XLIV "Special Property Provisions" of Contract No. AT(04-3)-700, certain arrangements with regard to the Commission's use and possible acquisition of certain Contractor-owned real property, which said real property may be used in part in the performance of this contract.

Contractor agrees, in the event of termination or expiration of Contract No. AT(04-3)-700 before termination or expiration of this contract, to amend this contract without further consideration to include hereunder the said Article ^{XLIII} XLIV and paragraph (b)(2) of Article III of Contract No. AT(04-3)-700 as the same may then exist.

Without limiting or otherwise qualifying in any way the Commission's rights referred to in the preceding paragraphs of this Article, the Commission shall have the right to permit others (governmental or private) to occupy, use and/or operate any portion of Government-owned facilities other than LMEC on the "Site" as described in Article ^{XLIII} XLIV, Contract No. AT(04-3)-700, from time to time upon such terms as the Commission may deem appropriate. Without diminishing said right the Commission will endeavor to reach agreement with the Contractor on reasonable arrangements for each such use of facilities provided however that:

- (a) The Commission shall require such occupier, user or operator to comply with all Commission approved safety rules and regulations applicable to the turned over portion of the Site.
- (b) The Commission shall hold Contractor harmless against:

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- (1) loss of, or damage to, Government property and property of the Contractor, and
- (2) third party liability, arising out of such occupation, use and/or operation; except to the extent any such loss, damage or liability is covered by insurance carried by Contractor or caused by fault or neglect of Contractor and provided such loss, damage or liability would be an unallowable cost under the contract if the property turned over to others were being occupied, used or operated by Contractor.

If such use of facilities by others prevents the Contractor from performing all or a portion of the work under any Task, the Contractor shall be excused from performing such work.

Some are deleted from transcription
~~ARTICLE L EXCUSABLE DELAYS~~

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress,

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and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (c) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the ^{clause} Article hereof entitled "Termination for Default or for Convenience of the Government". (As used in this ^{clause} Article, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.)

ARTICLE LI CONTENT OF CONTRACT AND ALTERATIONS THEREIN

This contract consists of this document of 110 pages together with Appendix A thereto. The following changes or alterations were made in the provisions of the contract prior to execution thereof:

NONE.

IN WITNESS WHEREOF, the Government and the Contractor have executed this contract, intending to be legally bound thereby.

ARTICLE LI

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THE UNITED STATES OF AMERICA

By _____

NORTH AMERICAN ROCKWELL CORPORATION

By _____

Title _____

I, _____, certify that I am _____
_____ of the corporation named as Contractor herein;
that _____ who signed this contract on behalf of
the Contractor was then _____
of said corporation, that said contract was duly signed for and on
behalf of said corporation, but authority of its governing body, and
is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the seal of
said corporation this _____ day of _____, 1970.

SEAL

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APPENDIX "A"

CATEGORIES OF TECHNOLOGY

A. CERTAIN MATERIALS - AS CATEGORIZED HEREINBELOW

Alloys

Rocket Propellants - liquid and solid

Semiconductors

Superconductors

Polymers, and Organic Plastic and Laminates

Coatings and Bonding Materials

Photosensitive Materials

Diffraction Gratings

Films

Concrete Material

Adhesives and Sealants

Dry Film Lubricants

Liquids for Scale Removal, Corrosion Resistance,
Dye Penetrant Inspection, Braze Stopping, and
Allied Metal Surface Treatments

Gallium Arsenide

Beryllium Oxide

Filament-Wound Structures

Ceramic Structural Materials

B. METALWORKING PROCESSES AND EQUIPMENT

Including but not limited to joining (e.g., welding, brazing, soldering, bonding), coating, forming, machining, shaping, and laminating of metals and allied fabricational materials, including techniques therefor and apparatus for performing said techniques; and associated tools and associated inspection devices.

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APPENDIX "A"
Page 2

C. APPARATUS AND SYSTEMS INsofar AS FUNCTIONING FOR MOVING IN CHANNELS, PACKAGING, OR STORAGE OF SOLIDS OR FLUIDS; MECHANICAL CONNECTORS AND FASTENERS

Including but not limited to the dispensing, packaging for shipment, and storage of solids and fluids, components and systems for movement of solids and fluids in channels, e.g., pumps, seals, valves, conduits, actuators (including those featuring motors, generators, or servos) adapted for association with such systems, associated accumulators, associated pistons, associated dampers; connectors and fasteners for joining mechanical members.

D. ELECTRONIC COMPONENTS, SYSTEMS, AND SUBSYSTEMS

Including but not limited to computers, microelectronics, analog-digital converters, data processing, control systems, data storage devices, radar, sonar, and lasers.

E. INSTRUMENTATION - NOT INCORPORATING OR UTILIZING RADIOACTIVE MATERIALS OR ATOMIC ENERGY

Including but not limited to instruments, systems, and subsystems, for measuring, testing, controlling, signalling and recording, utilizing mechanical, chemical, electrical, or optical principles; and instrument components, systems, and subsystems not incorporating or utilizing radioactive material or atomic energy.

F. AIRCRAFT AND ROCKET ENGINES AND FRAMES

Including but not limited to airplanes, rocket engines and frames, helicopters, and ground effect machines, and components and systems thereof.