

TERMS AND CONDITIONS AES-1

FEBRUARY 15, 1983

APPLICABLE TO

ARCHITECT-ENGINEERING SERVICES

CONTRACTS

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1. DEFINITIONS

a. The term "Lockheed Martin" as used herein means Lockheed Martin acting by and through Missiles and Space.

b. The term "Architect-Engineer" as used herein means the party with which Lockheed Martin enters into the contract in which these Terms and Conditions are incorporated.

c. The term "contract" as used herein means the contractual instrument in which these Terms and Conditions are incorporated.

d. The term "Contractor" as used herein means the Architect-Engineer as defined in b. above.

e. The term "subcontractor" as used herein means any party furnishing materials or services to the Architect-Engineer pursuant to the requirements of the contract.

f. The terms "work", "supplies" and "services" as used herein shall mean all materials, equipment, tools, facilities, transportation, and labor (including supervision) furnished pursuant to the requirements of the contract.

g. The term "Lockheed Martin Procurement Representatives" as used herein means the person or persons identified in the contract who are authorized by Lockheed Martin to administer, alter, modify or change the provisions of the contract.

2. COMPOSITION OF THE ARCHITECT-ENGINEER

If the Architect-Engineer hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

3. INDEPENDENT CONTRACTOR

It is understood and agreed that the Architect-Engineer shall be deemed to be an independent contractor in all its operations and activities hereunder; and that the employees furnished by the Architect-Engineer to perform work hereunder shall be deemed to be the Architect-Engineer's employees exclusively without any relation whatever to Lockheed Martin as employees or as independent contractors; that said employees shall be paid by the Architect-Engineer for all services in this connection; that the Architect-Engineer shall carry Workers' Compensation insurance and that the Architect-Engineer shall be responsible for all obligations and reports covering Social Security, Unemployment Insurance, Workers' Compensation, Income Tax, and other reports and deductions required by Local, State and Federal Law.

4. RESPONSIBILITY OF THE ARCHITECT-ENGINEER

a. The Architect-Engineer shall be totally responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the Architect-Engineer under this contract. The Architect-Engineer shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services which Lockheed Martin determines to be necessary.

b. Neither Lockheed Martin's review, approval or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Architect-Engineer shall be and remain liable to Lockheed Martin for all damages to Lockheed Martin resulting from the Architect-Engineer's performance of any of the services furnished under this contract.

c. The rights and remedies of Lockheed Martin provided for under this contract are in addition to any other rights and remedies provided by law.

5. SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS

Any subcontractors and outside associates or consultants required by the Architect-Engineer in connection with the services covered by this contract will be limited to such individuals or firms as were specifically identified and agreed to in writing during negotiations. Any substitution in such subcontracts, associates or consultants will be subject to the prior approval of Lockheed Martin.

6. REQUIREMENTS FOR REGISTRATION OF DESIGNERS

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in the State in which such services are performed hereunder.

7. DESIGN WITHIN FUNDING LIMITATIONS

If Lockheed Martin has determined that performance considerations are secondary to cost limitations and this contract so stipulates, the estimated construction contract price for the project to be designed, established during contract negotiations between Lockheed Martin and the Architect-Engineer, is set forth in this contract and the following clause shall apply:

a. The Architect-Engineer shall accomplish the design services required under this contract so as to permit the award of a contract for the construction of the facilities designed at a price that does not exceed the estimated construction contract price set forth in this contract. When all responsive bids or proposals, received from responsible bidders, exceed such estimated construction contract price, the Architect-Engineer shall perform such redesign and other services as are necessary to permit contract award within such finding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Architect-Engineer shall not be required to perform such additional services at no cost to Lockheed Martin if the unfavorable bids or proposals are the result of conditions beyond the reasonable control of the Architect-Engineer.

b. The Architect-Engineer will promptly advise Lockheed Martin at such time that it appears likely that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, Lockheed Martin will review the Architect-Engineer's revised estimate of construction costs. Lockheed Martin, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, (i) may authorize a change in scope of materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in the contract, (ii) may adjust such estimated construction contract price, or (iii) may terminate this contract.

c. When bids or proposals, as provided for in paragraph A. above, are not not solicited or where they are unreasonably delayed, Lockheed Martin shall prepare an estimate of constructing the design submitted and such estimate will be used in lieu of bids or proposals to determine compliance with the funding limitation.”

8. CHANGES

a. Lockheed Martin may, at any time, by written order, make changes within the general scope of this contract in the time of performance or the services to be performed. If any such change causes an increase or decrease in the Architect-Engineer's cost of, or time required for, performance of any services under this contract, whether or not changed by any such order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Architect-Engineer for adjustment under this clause must be asserted in writing, in a form acceptable to Lockheed Martin, within thirty (30) days from the date of such change, unless Lockheed Martin grants in writing, a further period of time prior to the date of final payment under the contract. No claim for equitable adjustment shall be allowed if asserted after final payment under this contract. In the event of a dispute over any equitable adjustment, the Architect-Engineer agrees to continue diligent performance of this contract pending resolution of any such dispute.

b. The Architect-Engineer agrees that its failure to submit such claim or claims within the applicable time period shall constitute a waiver thereof unless the Architect-Engineer requests in writing prior to the

expiration of the applicable time period that a time extension for filing its claim or claims be granted by Lockheed Martin. Any such extensions, if approved shall be effective only if authorized in writing by the Lockheed Martin Procurement Representative. Prior to final settlement of any timely filed claim or claims, the Architect-Engineer may submit revisions to such claim or claims for evaluation by Lockheed Martin provided that such revisions do not introduce different areas of costs or claim elements.

c. Lockheed Martin may request the Architect-Engineer to submit cost estimates for contemplated changes which may or may not result in a change to this contract. The Architect-Engineer agrees to submit cost proposals for such contemplated changes within ten (10) days of receipt of Lockheed Martin's request or such further period as may be stated in such request. Such cost estimates shall be prepared at no charge to Lockheed Martin.

d. Any clarification or assistance as may be provided by Lockheed Martin personnel concerning the work to be performed pursuant to this contract shall not be construed as a change to this contract and no change order, express or implied, will be binding unless it is issued in writing by the Lockheed Martin Procurement Representative. No services for which an additional cost or fee will be charged by the Architect-Engineer shall be furnished without the prior written authorization of the designated Lockheed Martin Procurement Representative.

e. Nothing contained in this clause shall relieve the Architect-Engineer from proceeding without delay in the performance of this contract as changed.

9. NOTICE AND APPROVAL OF RESTRICTED DESIGNS

In the performance of this contract, the Architect-Engineer shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by Lockheed Martin, the Architect-Engineer shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Architect-Engineer to be available only from a sole source. As to any such design or specification the Architect-Engineer shall report to Lockheed Martin giving the reason or reasons why it is considered necessary to so restrict the design or specification.

10. DRAWINGS AND OTHER DATA TO BECOME THE PROPERTY OF LOCKHEED MARTIN

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of Lockheed Martin and may be used on any other design or construction without additional compensation to the Architect-Engineer. Lockheed Martin shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Architect-Engineer agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Architect-Engineer for a period of three years after completion of the project agrees to furnish all retained works on the request of Lockheed Martin. Unless otherwise provided in this contract, the Architect-Engineer shall have the right to retain copies of all works beyond such period.

11. RETENTION OF RIGHTS AND INTEREST

Lockheed Martin hereby retains all of its rights, title and interest in and to all information, data, designs and inventions furnished by Lockheed Martin to the Architect-Engineer for the purpose of assisting the Architect-Engineer (i) in the performance of the contract or (ii) in the submission of a bid by the Architect-Engineer for such performance, whether furnished prior to, or after acceptance of, this contract. None of such information, data, designs and inventions shall be reproduced or used by the Architect-Engineer, except in the performance of this contract, or disclosed by the Architect-Engineer to others without the consent of Lockheed Martin. Upon completion of performance hereunder, all such information, data, designs and inventions shall be promptly returned by the Architect-Engineer to Lockheed Martin.

12. REPRODUCTION RIGHTS

Lockheed Martin does not grant to the Architect-Engineer (1) any reproduction rights to any materials, designs, drawings, data or other information produced in the performance of this contract or (2) any rights to use, in the manufacture or design of articles or materials for anyone other than Lockheed Martin, any of the designs, drawings or other information belonging to or supplied by Lockheed Martin.

13. ASSIGNMENT

a. Neither this contract nor any interest nor any sums becoming due to the Architect-Engineer hereunder shall be assigned by the Architect-Engineer without the prior written consent of Lockheed Martin, except that claims for moneys due or to become due the Architect-Engineer from Lockheed Martin under this contract may be assigned to a bank, trust company or other financial institution, including any federal lending agency. Any such assignment of moneys due or to come due shall cover all amounts payable under this contract and not already paid, and shall not be made to one party as agent or trustee for two (2) or more parties participating in such financing. Payment by Lockheed Martin to an assignee of any claim under this contract shall be subject to set-off or recoupment for any present or future claim or claims arising in connection with this contract which Lockheed Martin may have against the Architect-Engineer. Lockheed Martin reserves the right to make direct settlements and/or adjustments in price with the Architect-Engineer under the terms of this contract notwithstanding any assignment of claims for moneys due or to become due hereunder and without notice to assignee(s).

b. In the event of any such assignment of moneys, the assignee shall forward to Lockheed Martin two copies of a written notice of assignment and two copies of the instrument of assignment, all copies signed by the assignor and assignee.

c. An claim under this contract which has been assigned pursuant to the foregoing provisions of this clause may be further assigned and reassigned only with the prior written consent of Lockheed Martin to a bank, trust company or other financing institution, including any federal lending agency. In the event of such further assignment or reassignment the assignee shall be required to file one signed copy of a written notice of the further assignment or reassignment, together with a true copy of the instrument of further assignment or reassignment with the Architect-Engineer, and shall file two (2) signed copies of such written notice together with two (2) copies of such instrument with Lockheed Martin.

d. No assignee shall divulge any information concerning this contract except to those persons concerned with the transaction.

e. Indication of the assignment of claim and of any further assignment thereof and the name of the assignee shall be made on all vouchers or invoices certified by the Architect-Engineer.

14. PAYMENT AND INVOICING

a. The Architect-Engineer shall be paid for performance hereunder, upon submission of proper invoices or vouchers, the price stipulated herein for supplies delivered and accepted or services rendered and accepted, less applicable deductions, if any. Unless otherwise specified in the contract, payment will be made upon delivery of any portion of the work delivered or rendered for which a price is separately stated in this contract.

b. Each invoice submitted by The Architect-Engineer hereunder shall bear the following certification signed by an officer or other authorized representative:

“I certify that the payment herein requested is just and correct, and that the payment of the sum herein specified has not been received. I further certify that any supplies covered by this invoice were produced in compliance with all applicable requirements of the Fair Labor Standards Act (29 USC 206, 207, and 212), as amended, and of regulations and orders of the United States Department of Labor issued under such Act.”

c. Indication of any assignment of claim and of any further assignment thereof together with the name(s) of such assignee(s) shall be made on all vouchers or invoices submitted.

d. The originals and two copies of all invoices, certified by an officer or other responsible official of The Architect-Engineer authorized by it to certify such statements, shall be submitted for approval to the following:

Lockheed Martin Corporation
Missiles and Space
Accounts Payable
P. O. Box 3645
Sunnyvale, CA 95088-3645

At the same time, an additional copy shall be submitted to the Lockheed Martin Procurement Representative designed in this contract.

15. TERMINATION

a. Lockheed Martin may, by written notice to the Architect-Engineer, terminate this contract in whole or in part at any time, either for Lockheed Martin's convenience or because of the failure of the Architect-Engineer to fulfill its contract obligations. Upon receipt of such notice, the Architect-Engineer shall:

(1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to Lockheed Martin all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Architect-Engineer in performing this contract, whether completed or in process.

b. If the termination is for the convenience of Lockheed Martin, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to the failure of the Architect-Engineer to fulfill its contract obligations, Lockheed Martin may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Architect-Engineer shall be liable to Lockheed Martin for any additional cost occasioned to Lockheed Martin thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the Architect-Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of Lockheed Martin. In such event, adjustment in the contract price shall be made as provided in paragraph b. of this clause.

e. The rights and remedies of Lockheed provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

16. SUSPENSION OF WORK

a. Lockheed Martin may order the Architect-Engineer in writing to suspend all or any part of the work for such period of time as it may determine to be appropriate for the convenience of Lockheed Martin.

b. If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of Lockheed Martin in the administration of this contract, or by its failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) the performance would have been suspended or delayed by any other cause, including the fault or negligence of the Architect-Engineer or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

c. No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the Architect-Engineer shall have notified Lockheed Martin in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount states, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

17. INDEMNIFICATION

The Architect-Engineer agrees that it will defend, indemnify, and hold harmless Lockheed Martin, its officers, and employees from any claim, suit, loss, cost, damage, expense (including attorneys' fees) or liability by reason of property damage or personal injury (including death) to any person (including the Architect-Engineer's employees), of whatsoever nature or kind arising out of, as a result of, or in connection with such performance and occasioned in whole or in part by the actions or omissions of the Architect-Engineer, its employees, agents, subcontractors, and/or lower tier subcontractors. Without in any way limiting the foregoing undertakings, the Architect-Engineer and its subcontractors and lower tier subcontractors shall maintain public liability and property damage insurance in reasonable limits (not less than may be required by other provisions of this contract) covering the obligations set forth above, and shall maintain proper workers' compensation insurance covering all its employees performing this contract.

18. INSURANCE

a. The Architect-Engineer shall furnish to Lockheed Martin a certificate of workers' compensation or self-insurance indicating compliance with all applicable labor codes, acts, laws or statutes, whether Federal or State, in which the Architect-Engineer operates including Employer's Liability insurance with a minimum of \$1,000,000 for injury or death of any one person. This certificate should provide thirty (30) days written notice to Lockheed Martin prior to cancellation, termination, alteration or material change of such insurance

b. The Architect-Engineer shall maintain during the performance hereof, Professional Liability, Comprehensive General Liability, and Comprehensive Automobile Liability of not less than \$1,000,000 combined single limit or equivalent for errors and omissions, bodily injury, personal injury and property damage as the result of any one occurrence. Professional and Comprehensive General Liability shall include coverage for contractual liability. Comprehensive Automobile Liability shall include coverage for Owned, Hired and Non-Owned automobiles.

c. Insurance required hereunder shall include, by endorsement to the policy(ies), Lockheed Martin as an additional insured insofar as work performed by the Architect-Engineer for Lockheed Martin is concerned, contain a severability of the interest clause, provide that Lockheed Martin shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance, and provide a thirty (30) day written notice to Lockheed Martin prior to cancellation, termination, alteration or material change of such insurance.

d. Evidence of coverage required hereunder shall state that coverage provided is primary and is not excess or contributing with any insurance or self-insurance maintained by Lockheed Martin.

e. Lockheed Martin shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

f. The Architect-Engineer shall furnish the required certificates and endorsements to Lockheed Martin prior to commencing performance hereof.

g. All insurance certificates, endorsements, cancellations, terminations, alterations and material changes of such insurance shall be issued and submitted to the designated Lockheed Martin Procurement Representative.

19. COMPLIANCE WITH LOCAL, STATE, AND FEDERAL LAW

In the performance of this contract, the Architect-Engineer agrees to comply with all applicable Local, State, and Federal laws and executive orders and regulations issued pursuant thereto and agrees to indemnify Lockheed Martin against any loss, cost, damage, or liability by reason of the Architect-Engineer's violation of this clause.

20. SAFETY

a. In performing work under this contract on Lockheed Martin-owned or Lockheed Martin controlled premises, the Architect-Engineer shall, and shall require its subcontractors to (i) conform to the safety and health regulations of all applicable Local, State and Federal safety and health laws, rules and regulations as in effect on the date of this contract and (ii) take such additional precautions as Lockheed Martin may reasonably require for accident prevention and safety purposes. The Architect-Engineer agrees to take all reasonable steps and precautions to prevent accidents and preserve the life and health of personnel performing or in any way affected by performance under this contract on such premises.

b. All designs, drawings, materials, and other items produced or furnished by the Architect-Engineer pursuant to this contract shall be in accordance with, incorporate, and comply with the Occupational Safety and Health Act (OSHA) and all regulations issued pursuant thereto. The Architect-Engineer agrees to redesign, revise, repair, modify or replace at its sole cost and expense, any such items furnished or produced pursuant to this contract which do not comply with OSHA.

c. The Architect-Engineer agrees to defend, hold harmless, and indemnify Lockheed Martin from and against any claim, loss, cost, damage, or liability (including attorneys' fees) by reason of property damage or personal injury (including death) to anyone (including the Architect-Engineer's employees) occasioned in whole or in part by the Architect-Engineer's failure to comply with the provisions of this clause or by a violation (by the Architect-Engineer or any item produced or furnished hereunder) of OSHA standards.

21. RELEASE OF INFORMATION

a. The Architect-Engineer shall not, without the prior written consent of Lockheed Martin, disclose any information of any nature whatsoever relative to this contract except as may be required to ensure performance or as is required by law.

b. The Architect-Engineer shall insert the provisions of this clause, including this paragraph b., in any subcontract issued hereunder.

22. EQUAL OPPORTUNITY

The Equal Employment Opportunity clause in Section 202 of Executive Order (E.O.) 11246, as amended, and the implementing rules and regulations (41 CFR Part 60) are incorporated herein by reference, unless this contract is exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of E.O. 11246 or provisions of any superseding E.O. Unless this contract is so exempted, the applicable Equal Employment Opportunity Compliance Certificate previously submitted by the Architect-Engineer to Lockheed Martin is by reference also incorporated herein.

23. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

The Affirmative Action clause of Title 41, Code of Federal Regulations, Part 60, Subsection 250.4 and the implementing rules and regulations of the Department of Labor associated therewith are incorporated herein by reference unless this contract is under \$2,500.

24. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

The Affirmative Action Clause in Title 41, Code of Federal Regulations, Part 60, Subsection 741.4 and the implementing rules and regulations of the Department of Labor associated therewith are incorporated herein by reference unless this contract is under \$2,500.

25. CLEAN AIR AND WATER

Unless this contract is for \$100,000 or less or is otherwise exempt, the Architect-Engineer agrees as follows:

- 1) To comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract;
- 2) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing;
- 3) To use its best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and
- 4) To insert the substance of the provisions of this clause in any non-exempt subcontract; including this paragraph 4).

26. REMEDIES

The rights and remedies of Lockheed Martin provided herein shall be cumulative and in addition to any other rights and remedies provided by law or equity.

27. WAIVER

The failure of Lockheed Martin in any one or more instances to insist on performance of any of the provisions of this contract shall in no way be construed to be a waiver of such provisions in the future.