

**LOCKHEED MISSILES & SPACE COMPANY, INC.**  
**Sunnyvale, California**

**GENERAL TERMS AND CONDITIONS**

**FOR**

**FIXED PRICE CONSTRUCTION CONTRACTS**

**FPCC-7**

**REVISED, SEPTEMBER 1992**

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ARTICLE 1 - CONTRACT ACCEPTANCE

This contract becomes the exclusive Agreement between the parties for the supplies or services subject to the terms and conditions hereof, when accepted by acknowledgement or commencement of performance. Additional or different terms proposed by contractor shall not be applicable unless accepted in writing by the Lockheed Procurement Representative. No change in, modification of, or revision to this contract shall be valid unless in writing and signed by the authorized Lockheed Procurement Representative.

ARTICLE 2 - DEFINITIONS

- A. The term- "Contractor," when used in the General Terms and Conditions, refers to the company or firm so named in the contract. When used in the body of the specifications, it refers to the contractor for that specific work whether it be the contractor, a subcontractor, or "other contractor".
- B. The term "Other Contractor" refers to contractors having a direct contractual relationship with Lockheed other than those described in this contract.
- C. The term "Subcontractor," as employed herein, includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design according to the plans or specifications of this work but does not include a supplier who merely furnishes material not so worked.
- D. The term "Work" shall mean all labor, materials, plant, equipment, tools, transportation, facilities, supervision and services necessary for and/or reasonably incidental to the fabrication, delivery, and installation of all items shown on the drawings and/or described in the specifications and/or conditions of the contract.
- E. The term "Lockheed" shall mean Lockheed Missiles & Space Company, Inc., (LMSC) a subsidiary of the Lockheed Corporation.
- F. The term "Construction Engineer," as used herein, means the Lockheed Construction Engineer of Facilities Engineering assigned the specific responsibility for inspection and construction surveillance under this contract.
- G. The term "Procurement Representative," as used herein, means the person in the Lockheed General Procurement Organization assigned the responsibility for administration of this contract.
- H. The term "Completion," shall mean accomplishment of all items of work as described in the contract. This includes, but is not limited to, all "punch list" items, clean-up, touch-up, administrative paperwork actions and removal of the contractor's personnel, tools and equipment from the job site.
- I. Where the term "approved" is used, it means "approved by Lockheed". Where "approved

equivalent" is used, it means approved by Lockheed as being equivalent. The evaluation of qualities shall be in the sole determination of Lockheed.

- J. (1) Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation" or "description" of Lockheed is intended and similarly the words "approved," "accepted," "acceptable," "satisfactory" or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" Lockheed, unless otherwise expressly stated.
- (2) Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the specifications and/or the drawings accompanying this contract unless stated otherwise.
- K. "Specification," as used herein, refers to all of the Lockheed specifications and documents specified in the schedule, supplemental specifications and addenda thereto, and to such descriptive data as may be incorporated in change orders.

ARTICLE 3 - REFERENCES

Unless otherwise specified, all specifications, publications and standard documents referenced in the Standard Construction Specifications or Supplemental Specifications shall be deemed to mean the current revision (including all addenda, amendments and errata) in effect as of the bid due date.

ARTICLE 4 - INTERPRETATION

This Contract shall be construed and interpreted solely in accordance with the laws of the State of California.

ARTICLE 5 - INDEPENDENT CONTRACTOR

It is understood and agreed that the Contractor shall be deemed to be an independent Contractor in all its operations and activities hereunder; and that the employees furnished by the Contractor to perform work hereunder shall be deemed to be the Contractor's employees exclusively without any relation whatever to Lockheed as employees, agents, or as independent contractors; that said employees shall be paid by the Contractor for all services in this connection; that the Contractor shall be responsible for all obligations and reports covering Social Security Unemployment Insurance, Workman's Compensation, Income Tax, and other reports and deductions required by local, state and/or federal law or regulation.

ARTICLE 6 - SUPERINTENDENCE OF THE WORK

- A. The Contractor shall designate a representative who shall direct and coordinate all matters relating to the work. If requested by Lockheed, such designation shall be in writing.
- B. The Contractor and each subcontractor shall keep on its work, during its progress, a

competent superintendent and any necessary assistants, all satisfactory to Lockheed. The superintendent shall not be changed except with the consent of Lockheed unless the superintendent ceases to be in the Contractor's employ. The superintendent shall represent the Contractor in the Contractor's absence, and all direction given to him shall be as binding as if given to the Contractor.

- C. The Contractor and each subcontractor shall give efficient supervision to the work using their best skill and attention. They shall carefully study and compare all drawings, specifications and other instructions, and shall at once report to Lockheed any error, inconsistency or omission which they may discover.
- D. The Contractors' and subcontractors' superintendent's shall also supervise the performance of all contract changes issued by Lockheed.

ARTICLE 7 - LOCKHEED CONSTRUCTION ENGINEER

The work will be conducted under the general direction of the Lockheed Construction Engineer and is subject to inspection at all times to insure strict compliance with the terms of the contract. The presence or absence of a Construction Engineer shall not relieve the Contractor from any requirements of the contract.

ARTICLE 8 - SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

The Contractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, and the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as the information is ascertainable from an inspection of the site, including all exploratory work done by Lockheed as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint itself with the available information will not relieve it of responsibility for estimating properly the difficulty or cost of successfully performing the work. Lockheed assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by Lockheed.

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and locations of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve the Contractor of responsibility for successfully performing the work without additional expense to Lockheed. Lockheed assumes no responsibility for any understandings or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understandings or representations by Lockheed are expressly stated in the contract.

ARTICLE 9 - CONFERENCE PRIOR TO COMMENCEMENT OF WORK

Before any work is commenced under the contract, the Procurement Representative shall call a meeting with the Contractor to execute the construction contract. At this award conference the buyer and the construction engineer will discuss with the Contractor all aspects of the contract terms and conditions to insure a complete understanding of the contract requirements. The Contractor, at this meeting, shall provide its initial schedule in chart form (use Attachment No. 3) setting forth its proposed starting date, time span, dollar value and completion date for the various phases of the work to be performed by the Contractor and its subcontractor. The progress chart submitted at this conference shall be considered preliminary and, under ARTICLE 15 - Contract Schedule of Progress a more detailed progress schedule may be required by Lockheed. At the option of Lockheed, a separate preconstruction conference may be held within five days of award to conduct a more comprehensive schedule review and to obtain mutual Agreement to the schedule. The Contractor shall have its major subcontractors attend the preconstruction conference.

ARTICLE 10 - CHANGES

- A. The Lockheed Procurement Representative may, at any time, without notice to sureties, by written order designated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:
  - (1) In the specifications and drawings;
  - (2) In the method or manner or performance of the work;
  - (3) In the Lockheed-furnished facilities, equipment, materials, services or site; or
  - (4) Directing acceleration in the performance of the work.
- B. Any other written or oral order from the Lockheed Procurement Representative termed to be "direction," "instruction," "interpretation," or "determination" which causes a change to the scope of work or schedule shall be treated as a change order under this clause, provided that the Contractor gives the Lockheed Procurement Representative written notice within ten (10) calendar days of receipt of such order stating the date, circumstances and source of the order and that the Contractor regards the order as a change order.
- C. Any notice of a change directed under the terms of the contract will be by change order. A change order, to have any legal effect, must be signed by the Lockheed Procurement Representative. Upon receipt of such change order, the Contractor shall, without delay, commence performance of the work described in the change order. All authorized change orders will be subsequently incorporated by a formal contract amendment. Except as herein provided, no order, statement, or conduct of the Lockheed Procurement Representative or any other Lockheed employee shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for the performance of any part of the work under this contract, whether or

not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that no claim for any change under paragraph B of this ARTICLE shall be allowed for any costs incurred more than ten (10) days before the Contractor gives written notice as therein required.

- E. If the Contractor intends to assert a claim for an equitable adjustment under this clause, the Contractor shall, within the time limits set forth below, submit to the Procurement Representative a written statement setting forth the nature of the claim, accompanied by an estimate on Lockheed form entitled "Construction Contractor and Subcontractor Change Order Summary" (Attachment No. 2). The cost data presented shall be sufficiently detailed to support the reasonableness of the cost estimate. All estimates for changed work are subject to negotiation.
- (1) Claims resulting from a written change order issued by Lockheed shall be submitted within fifteen (15) calendar days after the furnishing of each notice.
  - (2) Claims resulting from any other written or oral order for which the Contractor has given notice to Lockheed under (B) above shall be submitted within fifteen (15) calendar days after the furnishing of each notice.
  - (3) Reasonableness of price involves overhead and profit as well as direct costs. In the event the contractor or any subcontractor elects to itemize overhead costs for change orders of \$10,000.00 or more instead of using the standard allowances set forth in Attachment No. 2, the books of the contractor or subcontractor shall be available to audit by an authorized representative of Lockheed. Allowability of overhead or indirect costs as identified by such audits shall be in accordance with the principles of Subpart 31.2 of the Federal Acquisition Regulations (FAR) and Subpart 31.2 of the Defense Federal Acquisition Regulations (DFARS).
  - (4) The price to be negotiated for any change involving a reduction in cost due to changes in the scope of work or any other cause shall include overhead and profit calculated at the same rates as for a price increase. For any change involving both increases and decreases in direct cost, the overhead and profit shall be based on the net difference in direct costs.
- F. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.
- G. Contractor agrees that it will continue with performance of this contract pending resolution of any dispute over equitable adjustments thereto.
- H. Proposed Changes
- (1) Lockheed may from time to time request the Contractor to submit to cost estimates for proposed changes. These proposed changes, at Lockheed's option, may or may not be incorporated into the contract at a later date. Such cost estimates are to be prepared at



no charge to Lockheed.

- (2) The Contractor shall submit a cost proposal for any proposed changes not later than ten (10) days after receipt of Lockheed's request, unless a different period of time is stated by Lockheed in the request.

#### ARTICLE 11 - ORAL CHANGES INVALID

No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this contract, and, except as otherwise herein expressly provided, no charge may be made for any extra work or material unless the same has been ordered in writing by the Lockheed Procurement Representative.

#### ARTICLE 12 - SPECIFICATIONS AND DRAWINGS

##### A. Lockheed Specifications and Drawings

- (1) Order of Precedence

Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of a difference between the drawings and specifications, the specifications govern. In case of a discrepancy either in figures, in the drawings, or in the specifications, or any applicable Federal, State, Regional, and/or local laws, codes or regulations, the matter shall be promptly submitted to the Lockheed Procurement Representative who shall promptly make a determination in writing. Any action taken by the Contractor without such a determination shall be at the Contractor's own risk and expense. Lockheed shall from time to time furnish such detailed drawings and other information as it may consider necessary, unless otherwise provided.

- (2) Installation of Equipment

The drawings indicate sizes, locations, connections to equipment and methods of installation. For purposes of clarity and legibility, the drawings are essentially diagrammatic and although size and location of equipment is drawn to scale wherever possible, the Contractor shall make use of all data in all of the construction documents, and shall verify this information at building site.

- (3) Installation of System

The specifications describe the quality and character of materials and equipment. Miscellaneous items of work and material necessary to the complete installation of the system shall be provided by the Contractor whether or not mentioned in the specifications or shown on the drawings.

- (4) Verification of Dimensions

Scaled dimensions are approximate, written dimensions shall take precedence over scaled dimensions. Before proceeding with the work or ordering materials, the

Contractor shall check and verify all dimensions and shall assume all responsibility for the fitting of its materials and equipment to other parts of the equipment and structure.

B. Contractor/Subcontractor Drawings

(l) Shop Drawings

(a) The Contractor shall provide at its sole expense shop drawings for all shop fabricated work and/or for other items requested by Lockheed. The shop drawings shall be submitted in accordance with the approved construction schedule. Drawings shall include all schedules, fabrication details, site plans and other data required for the work of the various trades. Lockheed will review them and advise the Contractor of action taken within approximately ten (10) working days.

(b) Review by Lockheed is for general conformance with the design concept and contract documents. Review will result in one of the four following dispositions:

(i) Reviewed - No exceptions taken.

(ii) Reviewed - Verify corrections noted and distribute record copy.

(iii) Amend and resubmit.

(iv) Reject - resubmit - see remarks.

Review by Lockheed is not considered complete until dispositions (i) or (ii) above have been made on submittals.

(c) Review by Lockheed shall in no way relieve the Contractor of meeting local building codes or the responsibility or compliance with Lockheed drawings or specifications unless deviations have been expressly agreed to by a supplemental Agreement to the contract, nor shall it relieve the Contractor of responsibility for errors or discrepancies of any sort in the shop drawings or schedules; nor shall it relieve Contractor of any responsibility under any of the terms, conditions, specifications or any other requirement of the contract. Any deviations by Contractor from Lockheed specifications on the shop drawings are to be set forth in a separate cover letter to accompany the drawings along with a justification of why the deviation was considered necessary or beneficial to Lockheed by the Contractor. Lockheed approval of any shop drawings containing any deviation from the approved specifications shall not be construed to be approval of those deviations absent such a cover letter specifically calling them to Lockheed's attention.

(d) The Contractor shall not commence any forming, fabrication pursuant to paragraph (b) above or similar work until shop drawings are reviewed and approved by Lockheed.

- (e) Shop Drawings shall be submitted in the form of a transparency suitable for reproduction, plus a blue-line print made therefrom. An appropriate clear space shall be allowed on the drawing in the lower right hand corner for the placement of review and date stamps. After review, Lockheed will obtain prints from the transparency as required for Lockheed's use and will return the reviewed, noted, or corrected transparency to the Contractor. Transparencies returned for resubmission or rejected require the original drawings to be corrected and a new transparency with a blue-line print made therefrom submitted. Such procedures shall be followed until review is completed by Lockheed.
- (f) The Contractor shall obtain and provide such number of prints from the final reviewed transparency as may be required or distribution. All printed matter such as catalog cuts, brochures, illustrations, material lists, and performance data shall be submitted in eight (8) copies. Drawings and printed matter shall be identified by project title, building number, register number and contract number.

(2) Record Drawings (As-builts)

- (a) The Contractor shall keep, and shall cause all subcontractors to keep, record drawings on the job site, during working hours, during the progress of the work. On these drawings shall be entered all dimensions established in the field; all elevations and inverts, and all deviations, as approved by Lockheed, from the size, location or spacing shown on the drawings. At the conclusion of each phase of the work, this information is to be turned over to the Lockheed Construction Engineer.
- (b) From these drawings it must be possible to locate with accuracy any covered or concealed work and work of any nature which might be involved in future construction or maintenance.

C. The Contractor shall keep on the work site a copy of all drawings and specifications and shall at all times give Lockheed access thereto.

ARTICLE 13 - CHANGED CONDITIONS

The Contractor shall promptly, and before such conditions are disturbed, notify Lockheed in writing of:

- A. Sub-surface or latent physical conditions at the site differing materially from those indicated in this contract, or
- B. Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the nature and character of work provided for in this contract.

Lockheed shall promptly investigate the conditions, and if it finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any adjustment in price shall be negotiated following submittal of the contractor's cost estimates presented in the form required by ARTICLE 10, CHANGES. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the Contractor has given notice as required above or unless Lockheed grants a further period of time before the date of final payment under the contract.

ARTICLE 14 - MATERIAL AND APPLIANCES

- A. Unless otherwise specified, all materials shall be new and both workmanship and material shall be of the most suitable grade for the purpose intended. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials. Only domestic material shall be used.
- B. In the event Contractor finds it necessary to substitute other materials for the materials specified in the drawings and specifications, the Contractor shall propose such substitution in writing to Lockheed setting forth comparative data including cost. No substitutions shall be made by Contractor without the prior written approval of Lockheed's Procurement Representative and such approval will be issued as a change order to the contract.
- C. Unless otherwise approved, in writing, all materials delivered to and stored on the site shall be in their original containers with the manufacturer's label intact and legible.
- D. Transactions with manufacturers shall be through the Contractor. All letters initiated by the manufacturer, if transmitted to Lockheed, shall be accompanied by a cover letter in which the Contractor shall state all causes and effects of the subject matter and his position and/or disposition on same.
- E. Where several materials are specified by name for one use, any one of those so specified may be used.
- F. Whenever an item or class of material is specified exclusively by trade name, manufacturer's name, or by catalog reference, the Contractor shall use only such item unless written approval for substitution is secured from the Procurement Representative.
- G. Like material and equipment shall be one brand of manufacture throughout.
- H. Complete wiring and piping diagrams shall be included.
- I. Contractor shall supply certificates stating that materials conform to reference specification (ASTM, etc.) prior to installation as directed by Lockheed.
- J. Any job site activity conducted for the Contractor by a field representative of any vendor shall be coordinated through the Construction Engineer.

ARTICLE 15 - CONTRACT SCHEDULE OF PROGRESS

- A. Time is of the essence in the performance of this contract. Performance by the Contractor according to the schedule is a major condition of this contract.
- B. The Contractor shall, no later than five (5) days after receipt of contract award notification or prior to the start of construction, whichever is earlier, prepare and submit to Lockheed for approval a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the date on which it will start the several activities (including procurement of materials, plant and equipment), the contemplated dates for completing the same and a listing of proposed subcontractors. The schedule of progress (hereinafter "schedule") shall be presented on a chart of suitable scale to indicate approximately the percentage of work and cost scheduled for completion at any point in time. The Contractor shall enter on the chart the actual progress at such intervals as directed by Lockheed, at least weekly, and shall immediately deliver three (3) copies thereof to Lockheed. If the Contractor fails to submit a schedule within the time herein prescribed, Lockheed may withhold payments until such time as the Contractor submits the required schedule.
- C. If, in the opinion of Lockheed, the Contractor falls behind the schedule, the Contractor shall take such steps as are necessary to improve its progress and Lockheed may require the Contractor to increase the number of shifts, or overtime operations, days of work, or the amount of construction facilities or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to Lockheed.
- D. A list of the items of all materials, all equipment and fixtures proposed for installation shall be submitted within twenty (20) calendar days after the award of the contract, or sooner if job schedule requires, to Lockheed for review. This list shall show the anticipated delivery date of each item to the job site. When equipment drawings or schematics are submitted to Lockheed for the purpose of showing the installation in greater detail, their review shall not excuse the Contractor from requirements shown on the Lockheed drawings or specifications. The number of copies of submittals shall be in accordance with ARTICLE 12, and shall show the following for each item:
  - (1) Manufacturer's Name
  - (2) Trade name
  - (3) Catalog Number, if any.
- E. Failure of the Contractor to comply with the requirements of Lockheed under this ARTICLE shall be grounds for determination by Lockheed that the Contractor is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such a determination, Lockheed, at its sole discretion, may terminate the Contractor's right to

proceed with the work, or any separable part thereof, in accordance with ARTICLE NO. 28  
- TERMINATION FOR DEFAULT - DAMAGES FOR DELAY - TIME EXTENSION.

ARTICLE 16 - PRELIMINARY OPERATION

Should Lockheed's Procurement Representative request by written notice that any portion of the plant, apparatus, or equipment be operated previous to the final completion and acceptance of the work, the Contractor shall consent, and such operation shall be under the supervision and directions of the Contractor. Lockheed, if requested in accordance with Paragraph B of ARTICLE 10 herein, will make an equitable adjustment pursuant to ARTICLE 10. Such preliminary operation and/or payment therefore shall not be construed as an acceptance of any of the work.

ARTICLE 17 - USE AND POSSESSION PRIOR TO COMPLETION

Lockheed, by furnishing a written notice, shall have the right to take possession of or use any completed or partially completed part of the work. Such possession or use shall not be deemed an acceptance of any work not completed in accordance with the contract. While Lockheed is in such possession, the Contractor shall be relieved of the responsibility for loss or damage to the work other than that resulting from the Contractor's fault or negligence. If such prior possession or use by Lockheed delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the contract price and/or time of completion will be made pursuant to ARTICLE 10 and the contract shall be modified in writing accordingly.

ARTICLE 18 - PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to Lockheed, be responsible for obtaining and maintaining all necessary licenses and permits, and for complying with any applicable Federal, State, Regional, and/or local laws, codes or regulations, permits, including air pollution, water pollution, and hazardous waste controls, in connection with the prosecution of the work. Plan check and testing services fees will be paid for by Lockheed unless specifically noted otherwise. All other fees, taxes and required bond premiums shall be paid by the Contractor. The Contractor shall pay for all utility, sanitary sewer and water connection charges, including development charges. The Contractor shall be similarly responsible for the following, including but not limited to: all damages to persons or property of third parties or to Lockheed that occur as a result of its fault or negligence; proper safety and health, and environmental precautions to protect the work, the workers, the public, the environment and the property of others; all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

ARTICLE 19 - OTHER WORK

- A. Lockheed may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Lockheed to carefully integrate its own work and that of its subcontractors with such additional work as may be directed by Lockheed. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

- B. Lockheed Work in the areas adjoining the construction site, or any other area, shall not be interrupted or interfered with during the progress of the construction unless otherwise agreed to in writing.

ARTICLE 20 - CONTRACTOR INSPECTION SYSTEM

The Contractor shall (1) maintain an adequate inspection system and perform such inspection as will assure that the work performed under the contract conforms to contract requirements, and (2) provided this contract exceeds \$10,000, maintain and make available to Lockheed adequate records of such inspections.

ARTICLE 21 - BONDS

If the price of this contract is \$10,000.00 or greater, the Contractor shall furnish to Lockheed a performance and a payment bond within ten days after award of this contract. Each bond shall be in an amount equal to one hundred percent (100%) of the contract price. If the price of this contract is less than \$10,000.00 and it is determined by Lockheed to be necessary, the Contractor shall within ten days after receipt of a request from Lockheed furnish performance and payment bonds in the amount acceptable to Lockheed. When so requested, premiums for the bonds shall be added to the contract price. The bonds of any surety company holding a certificate of authority from the Secretary of Treasury as an acceptable surety of Federal bonds will be accepted.

In the event the Contractor is unable to furnish satisfactory bonds, this contract may be terminated for default, at Lockheed's sole discretion, in, accordance with ARTICLE 28 - TERMINATION FOR DEFAULT.

ARTICLE 22 - LIENS

The Contractor shall pay promptly, when due, all wages of laborers and employees and all bills for materials used in construction of the work, together with all claims of any subcontractors, and all statutory withholdings and agrees to indemnify Lockheed and hold it, the construction site, and the work harmless from and against any and all liens including subcontractors' liens, claims for labor, services, and materials and agrees to forthwith discharge and pay any and all liens and claims. If a lien is filed against Lockheed property, Contractor shall (1) pay such lien and obtain a Release of Lien; or (2) post a Release Bond to lift the lien from Lockheed's property and shall duly record such Release Bond in the County real estate records and promptly provide Lockheed with a copy of the recorded bond within five (5) working days of notification by Lockheed. Failure to do so shall be deemed to be a material breach of the contract. Lockheed, at its discretion, may withhold any monies due the Contractor and use said money to satisfy any liens or past due amount.

ARTICLE 23 - SUBCONTRACTS

- A. As used in this clause, the term "subcontract" includes purchase orders.
- B. At the time of award of the contract, the contractors will provide to Lockheed's Procurement

Representative the names of all proposed subcontractors whose employees will require access to Lockheed premises, with the exception of material delivery men.

- C. Contractor shall provide to Lockheed, when requested, information about any proposed subcontract which is in excess of ten thousand dollars (\$10,000.00) or is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed ten thousand dollars (\$10,000.00).

Information to be furnished shall include:

- (1) A description of the supplies or services to be called for by the subcontract.
  - (2) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected.
  - (3) The proposed subcontract price.
  - (4) Identification of the type of subcontract to be used.
  - (5) Copies of the subcontract agreements shall be furnished to Lockheed if requested.
- D. Lockheed shall have the right to disapprove any and all prospective subcontractors. At the time of submittal to Lockheed of the names of the proposed subcontractors under (B) above, Lockheed may notify the contractor of the possible disapproval of any of the proposed subcontractors. The contractor shall not enter any subcontract for work hereunder with such subcontractor(s) without prior consent of Lockheed.
- E. Consent by Lockheed to any subcontract or any provisions thereof shall not be construed to relieve the Contractor of any responsibility for performing this contract unless such approval or consent specifically provides otherwise.
- F. The Contractor shall require all subcontractors who perform work on LMSC premises to comply with the Construction Contractor's Safety at LMSC-- Contractor's Handbook. The Contractor shall further require Subcontractors who perform work on LMSC premises and/or provide or use chemicals identified by the State of California as causing cancer, birth defects, or other reproductive harm to comply with Proposition 65, the Safe Drinking Water and Toxic Act of 1986. The Contractor agrees to hold Lockheed harmless against any loss, cost (including attorney's fees), damage, or liability arising out of Subcontractor's failure to comply with Proposition 65.

#### ARTICLE 24 - ASSIGNMENT

Neither this contract, nor any duty or right under it shall be delegated or assigned by the Contractor without the prior written consent of Lockheed except that claims for monies due, or to become due, under this contract may be assigned to a bank, trust company or other financing institution including



any federal lending agency by the Contractor without such consent. Lockheed shall be furnished with two signed copies of any such assignment. Payment to an assignee of any such claim shall be subject to set-off or recoupment any present or future claim or claims which Lockheed may have against the Contractor except to the extent that any such claims are expressly waived in writing by Lockheed. Lockheed reserves the right to make direct settlement and/or adjustment in price with the Contractor under the terms of this contract notwithstanding any assignment of claims for monies due or to become due hereunder and without notice to the assignee.

ARTICLE 25 - PAYMENT

- A. Lockheed will pay the contract price by the method hereinafter provided.
- B. If requested by the Contractor, Lockheed will make payments monthly as the work proceeds or at other intervals as agreed upon in advance. Contractor billings shall be in the format indicated in Attachment No. 1. Sample Invoice Format.
- C. If requested by Lockheed, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work in such detail as requested to provide a basis for determining the amount of payment. (See schedule required in ARTICLE 15 CONTRACT SCHEDULE OF PROGRESS). In preparation of estimates, Lockheed, at its discretion, may authorize material delivered on the site and preparatory work completed be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration; (1) if such consideration is specifically authorized by the contract; and (2) if the Contractor furnished satisfactory evidence that the Contractor has acquired title to such material and that it will be utilized on the work covered by this contract.
- D. In the event the Contractor's performance is behind the agreed upon Schedule, Lockheed may at its discretion withhold further payment until compliance with the agreed upon schedule is achieved. See ARTICLE 15 CONTRACT SCHEDULE OF PROGRESS.
- E. All invoices shall be identified with this contract number and submitted to the following address

Accounts Payable - LMSC  
P. O. Box 3645  
Sunnyvale, CA 94086-3645

Such invoices may be submitted monthly unless a greater frequency is authorized in writing; must be properly executed and in triplicate for a sum equal to the percentage of completed work, multiplied by the contract price less ten percent (10%), less prior payment, if any. Such invoices shall be due and payable net thirty (30) days after receipt of invoice unless otherwise provided in this contract.

- F. In making payments there shall be retained ten percent (10%) of the value of the completed work (as noted in paragraph E of this ARTICLE) until final completion and acceptance of

the contract work. At Lockheed's sole discretion, the amount retained pursuant to this section may be reduced to no less than 2%, provided, that such reduction shall not occur until the original completion date has passed or the work is substantially completed. In addition, Lockheed shall have the right to withhold from payments to the Contractor the amounts of any liens served on and/or filed against Lockheed in connection with the Contract until such liens have been released and a copy of the Lien Release with recording information stamped thereon has been provided to Lockheed. When the Contractor has met all terms and conditions of the contract, the Contractor shall, as a condition precedent to final payment, execute the Certificate of Completion form which was furnished as an attachment to the contract and submit the certificate to the Lockheed Procurement Representative. The amount retained will be paid thirty (30) days after a valid Certificate of Completion is submitted, executed by the Lockheed Procurement Representative and all contract amendments, if any, have been signed. Lockheed shall retain the right to set-off amounts owing to Lockheed by the Contractor against any amount due to Contractor. Notwithstanding the foregoing, Lockheed hereby reserves the right to withhold monies necessary to cover claims made against Lockheed which are determined to be the result of acts or failure to act on the part of the Contractor.

- G. When no progress payments are requested, a retention of ten percent (10%) shall be withheld for a period of thirty (30) days after execution of the "Certificate of Completion" described in Paragraph F above. This retention will not apply to contracts under two thousand dollars (\$2,000.00) and full payment may be made in accordance with invoice terms set forth in the contract.
- H. All material and work covered by payments made shall thereupon become the sole property of Lockheed. This provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of Lockheed to require the fulfillment of any or all of the terms of the contract or to terminate the contract as provided for in other terms and conditions of this contract.

ARTICLE 26 - PATENT INDEMNITY

Except as otherwise provided, the Contractor shall defend, indemnify, and hold Lockheed and its customers harmless from any loss, cost, damage, expense (including attorney's fees), or liability which may be incurred on account of infringement or misappropriation (actual or alleged) of patent rights, trademarks, copyrights, or trade secrets arising out of, in connection with, or as a result of, the performance of this contract or out of the use or disposal by or for the account of Lockheed of supplies furnished or construction work performed hereunder and defend, at its own expense, any action or claim in which such infringement or misappropriation is alleged by third parties, provided Contractor is notified of such actions or claims against Lockheed.

ARTICLE 27 - TERMINATION FOR CONVENIENCE

- A. Lockheed may terminate performance of work under this contract in whole or, from time to time, in part if the Procurement Representative determines that a termination is in Lockheed's

interest. The Procurement Representative shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

- B. After receipt of a Notice of Termination, and except as directed by the Procurement Representative, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
  - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
  - (3) Terminate all subcontracts to the extent they relate to the work terminated.
  - (4) Assign to Lockheed, as directed by the Procurement Representative, all right, title, and interest of the Contractor under the subcontracts terminated, in which case Lockheed shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
  - (5) With approval or ratification to the extent required by the Procurement Representative, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts the approval or ratification will be final for purposes of this ARTICLE.
  - (6) As directed by the Procurement Representative, transfer title and deliver to Lockheed (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to Lockheed.
  - (7) Complete performance of the work not terminated.
  - (8) Take any action that may be necessary, or that the Procurement Representative may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which Lockheed has or may acquire an interest.
  - (9) Use its best efforts to sell, as directed or authorized by the Procurement Representative, any property of the types referred to in subparagraph (6) above; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by the Procurement Representative. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Lockheed under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Procurement Representative.

- C. After expiration of the plant clearance period as defined in Subpart 45.6 of the Federal Acquisition Regulation, the Contractor may submit to the Procurement Representative a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Procurement Representative. The Contractor may request Lockheed to remove those items or enter into an Agreement for their storage. Within fifteen (15) days Lockheed will accept title to those items and remove them or enter into a storage Agreement. The Procurement Representative may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.
- D. After termination, the Contractor shall submit a final termination settlement proposal to the Procurement Representative in the form and with the certification prescribed by the Procurement Representative. The Contractor shall submit the proposal promptly, but no later than 60 days from the effective date of termination, unless extended in writing by the Procurement Representative upon written request of the Contractor within this 60 day period. However, if the Procurement Representative determines that the facts justify it, a termination settlement proposal may be received and acted on after 60 days or any extension. If the Contractor fails to submit the proposal within the time allowed, the Procurement Representative may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.
- E. Subject to paragraph D above, the Contractor and the Procurement Representative may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph E. or paragraph F. below, exclusive of costs shown in subparagraph F.(2) below, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended, and the Contractor paid the agreed amount. Paragraph F. below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- F. If the Contractor and Procurement Representative fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Procurement Representative shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph E above:
- (1) For contract work completed before the effective date of termination and acceptable to LMSC, the total (without duplication of any items) of:
    - (a) The cost of this work;
    - (b) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (a) above; and

- (c) A sum, as profit on (a) above, determined by the Procurement Representative under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Procurement Representative shall allow no profit under this subdivision (c) and shall reduce the settlement to reflect the indicated rate of loss.
- (2) The reasonable costs of settlement of the work terminated, including:
  - (a) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
  - (b) The termination and settlement of subcontracts (excluding the amounts of such settlements); and
  - (c) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- G. Except for normal spoilage, and except to the extent that Lockheed expressly assumed the risk of loss, the Procurement Representative shall exclude from the amounts payable to the Contractor under paragraph F. above, the fair value, as determined by the Procurement Representative, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Lockheed or to a buyer.
- H. The cost principles and procedures of Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.
- I. In arriving at the amount due the Contractor under this ARTICLE, there shall be deducted:
  - (1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;
  - (2) Any claim which Lockheed has against the Contractor under this contract; and
  - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to Lockheed.
- J. If the termination is partial, the Contractor may file a proposal with the Procurement Representative for an equitable adjustment of the price(s) of the continued portion of the contract. The Procurement Representative shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Procurement Representative.

- K. (1) Lockheed may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Procurement Representative believes the total of these payments will not exceed the amount to which the Contractor will be entitled.
- (2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to Lockheed upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement because of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date determined by the Procurement Representative because of the circumstances.
- L. Unless otherwise provided for in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to Lockheed, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Procurement Representative, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

ARTICLE 28 - TERMINATION FOR DEFAULT DAMAGES FOR DELAY  
TIME EXTENSIONS

- A. If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, Lockheed may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, Lockheed may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to Lockheed resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by Lockheed in completing the work.
- B. The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this ARTICLE, if:
  - (1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God or of the public enemy, (ii) acts of Lockheed or the Government in either its sovereign or contractual capacity, (iii) acts of another Contractor in the

performance of a contract with Lockheed, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

- (2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Procurement Representative), notifies the Procurement Representative in writing of the causes of delay. The Procurement Representative shall ascertain the facts and the extent of delay. If, in the judgment of the Procurement Representative, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Procurement Representative shall be final and conclusive on the parties.
- C. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Lockheed.
- D. The rights and remedies of Lockheed in this ARTICLE are in addition to any other rights and remedies provided by law or under this contract.

ARTICLE 29 - INSPECTION AND ACCEPTANCE

- A. Except as otherwise provided in this contract, inspection and/or test by Lockheed, of material and workmanship required by this Contract shall be made at reasonable times and at the site of the work unless Lockheed determines that such inspection or test of material which is to be incorporated into the work shall be made at the place of production,, manufacture, or shipment of such material. Making off-site inspection(s) or test(s) shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance nor in any way affect the continuing rights of Lockheed after acceptance of the completed work under the terms of Paragraph F of this ARTICLE, except as herein above provided.
- B. The Contractor shall, without charge, promptly replace any material or correct any workmanship found by Lockheed not to conform to the contract requirements unless in its interest Lockheed consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.
- C. If the Contractor does not promptly replace rejected material or correct rejected workmanship, Lockheed (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost there to the Contractor and/or (2) may terminate the Contractor's rights to proceed in accordance with the ARTICLE 28 - TERMINATION FOR DEFAULT - DAMAGE FOR DELAY - TIME EXTENSIONS, hereof.
- D. The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as

may be required by Lockheed. All inspection and test by Lockheed shall be performed in such manner as not to unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Contractor shall be charged with an additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

- E. Should it be considered necessary or advisable by Lockheed at any time before acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor shall upon request promptly furnish all necessary facilities, labor or material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or his subcontractor, the Contractor shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment in accordance with ARTICLE 10 hereof shall be made in the contract.
- F. Unless otherwise provided in this contract, acceptance by Lockheed shall be made as promptly as practicable after completion and inspection of all work required by this contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud. Final acceptance shall occur upon execution by Lockheed of the Certificate of Completion as required by ARTICLE 25. Acceptance by Lockheed for the purpose of commencement of warranties shall occur on the date of Final Inspection as indicated on the Certificate of Completion, unless otherwise agreed to in writing.

ARTICLE 30 - SUSPENSION OF WORK

- A. The Procurement Representative may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Procurement Representative determines appropriate for the convenience of Lockheed.
- B. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Procurement Representative in the administration of this contract, or (2) by the Procurement Representative's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.
- C. A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Procurement Representative 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 stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not



later than the date of final payment under the contract.

ARTICLE 31 - INDEMNIFICATION

The Contractor agreed to indemnify Lockheed, its officers, agents and employees, from and against all claims, damages, losses, and expenses (including attorney's fees) arising out of the performance of the work herein, which are (1) for bodily injury, illness, or death, or for property damage, including loss of use, or for indirect or consequential loss or damage to property or operations and/or, (2) caused in whole or in part by Contractor's act or omission or that of a subcontractor, or that of anyone employed by them or for whose acts Contractor or subcontractor may be liable. Contractor further agrees to sign an Agreement to this effect when requested to do so by Lockheed. This Agreement to indemnify is not applicable to liability caused by the sole negligence or willful misconduct of Lockheed as determined by a court of competent jurisdiction. Without in any way limiting the foregoing undertakings, Contractor and its subcontractors and lower tier subcontractors shall maintain public liability and property damage insurance in limits as described in ARTICLE 33 - INSURANCE, herein, and cover obligations set forth in this paragraph.

ARTICLE 32 - RISK OF PHYSICAL DAMAGE OR LOSS

The Contractor shall be liable for any loss or destruction of, or damage to any material, equipment or fixtures to be installed in the work prior to the time title to the work vests in Lockheed and loss or destruction of or damage to the work after such title vests in Lockheed and prior to final acceptance, except to the extent such loss, damage or destruction exceeds twenty-five thousand dollars (\$25,000.00) for each occurrence or is a direct result of a natural disaster such as a flood or earthquake.

ARTICLE 33 - INSURANCE

- A. Lockheed shall, during the progress of the work, maintain a combination of insurance and self-insurance covering Lockheed and Contractor and protecting the work against damage or loss arising from all risks of direct physical loss or damage subject to specified exclusions and a deductible clause, said insurance to cover the interest of Contractor in the work and all materials, supplies, equipment, machinery and apparatus entering into or used in the construction of the work including expendable items of Contractor's property which are used in or are incidental to the construction of the work, but do not become a part thereof (such as temporary sheds, scaffolding and forms), and which are not otherwise insured, and while situated on or within one hundred feet (100') of that portion of the construction site upon which the work is being erected. Contractor shall not include any premium to insure the twenty-five thousand dollar (\$25,000.00) loss threshold assumed by Contractor under ARTICLE 32 as a charge to this contract.
- B. The Contractor shall, during the progress of the work, maintain workers' compensation insurance, Contractor's comprehensive general and automobile liability insurance covering all owned or rented automotive and other equipment which is used in or on the work. Such insurance shall be placed through insurance brokers and with insurance carriers approved by Lockheed and the policies shall name Lockheed as an additional

insured.

- (1) The limits of liability provided in each such Contractor's Comprehensive general liability insurance policy shall be at least \$2,000,000.00 combined single limit or equivalent for body injury, personal injury and property damage as a result of any one occurrence.
- (2) Automobile liability insurance policy shall be not less than \$1,000,000.00 combined single limit or equivalent for bodily injury and property damage as a result of any one occurrence.

Said Contractor's comprehensive general and automobile liability insurance shall include coverage of the contractual liability assumed by the Contractor under ARTICLE 31 - INDEMNIFICATION., herein, and shall be primary to Lockheed's non-contributory liability insurance coverage. Certificates of all such insurance shall be filed with Lockheed before commencement of performance of the work and shall carry a provision that no cancellation of material change in the policy shall become effective except on thirty (30) days advance written notice thereof to Lockheed.

- C. Upon recommendation of the Contractor and approval by Lockheed or by direction of Lockheed, the above insurance limits may be increased or decreased and additional coverages may be carried. If the limits or coverages are increased, the cost of the additional coverages carried by the Contractor shall be added to the price of the work and shall be paid by Lockheed.

ARTICLE 34 - PROTECTION OF EXISTING STRUCTURES, UTILITIES AND  
IMPROVEMENTS

- A. The Contractor shall preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care shall be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches to trees broken during such operations or by the negligent operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with approved tree pruning compound as directed by Lockheed.
- B. The Contractor shall protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to the Contractor, and shall repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, Lockheed may have the necessary work performed and charge the cost thereof to the Contractor or obtain an equitable adjustment to the contract.
- C. The Contractor agrees that all live pipe and conduit lines encountered in the performance of the work herein contemplated shall be protected, supported in cut off and capped and/or re-

routed as required by certified or qualified persons for the appropriate trades, and Contractor agrees that Contractor shall promptly and properly notify the public utility companies, Lockheed and other parties involved in such matters and not interfere or begin work upon such live pipe or conduit lines without securing the express permission and approval of Lockheed and such other parties as required.

ARTICLE 35 - WARRANTY - GUARANTEE

- A. Notwithstanding inspection and acceptance by Lockheed or any provisions concerning the conclusiveness thereof, the Contractor warrants that all equipment, products, and material furnished and services performed under this contract (whether by Contractor or by a Subcontractor or anyone employed by them or for whose acts Contractor or a Subcontractor may be responsible) shall (a) be free from defects in Contractor furnished design (if any), materials and workmanship for the period of one (1) year after acceptance as indicated in ARTICLE 29, (b) comply with all specifications of this contract, and (c) otherwise fully conform to the requirements of this contract. Lockheed shall give written notice of any such defects or nonconformance to the Contractor.
  
- B. If the Contractor is required to correct or reperform, it shall be at no cost to Lockheed, and any item or service corrected or reperformed by the Contractor pursuant to this clause shall be warranted to the same extent as an item or work initially performed provided, however, that the commencement period for warranty of re-worked items shall commence upon acceptance of the reworked item. If the Contractor fails or refuses to promptly correct or reperform, Lockheed may, by contract or otherwise, correct or replace with a similar item or service and charge to the Contractor the cost occasioned to Lockheed thereby or obtain an equitable adjustment in the contract price. If Lockheed does not require correction or reperformance, Lockheed shall make an equitable adjustment to the contract. The rights and remedies of Lockheed provided in this clause are in addition to and do not limit any rights afforded Lockheed under law or any other clause of this contract or under any other warranty provided by Contractor or any of its suppliers or Subcontractors.
  
- C. Lockheed reserves the right to make temporary repairs as necessary to keep equipment in operating condition without voiding the Contractor's guarantee or relieving the Contractor of his responsibilities during the guarantee period.
  
- D. Any written notice hereunder by Lockheed may be served upon the Contractor by mailing it with postage thereon fully prepaid to the address indicated on the first page of the Construction Contract.

ARTICLE 36 - LABOR DISPUTES

- A. Whenever an actual or potential labor dispute involving the Contractor delays or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof in writing to the Procurement Representative.
  
- B. If, as a result of a labor dispute, a special reserved gate is designated by Lockheed for ingress

and egress by the Contractor to its job site, the Contractor and its subcontractors and suppliers will comply with the requirements to use only the designated reserved gate. Special badging may be required as long as the Contractor is restricted to the reserved gate.

- C. In the event a picket line is established as a result of a labor dispute with another contractor or supplier, the Contractor is obligated and is expected to continue performance on this contract.
- D. The Contractor shall insert the substance of this clause in all subcontracts issued hereunder.

ARTICLE 37 - SECURITY

- A. The Contractor will require its employees, agents, and subcontractors to comply with all security regulations established by the United States Government and/or Lockheed and further agrees that it and its subcontractors will remove from the work or construction site any employee or representative when requested to do so by Lockheed. Lockheed's demands in this connection will be governed by the necessities of the national defense, requests of any legally constituted authority, or its circumstances which reasonably justify such demands. Failure to comply with the requirements of this paragraph will be deemed to be a material breach of this contract.
- B. Certain areas of the Lockheed plant are restricted areas. These areas are marked and are to be avoided. It is required that the Contractor and lower tier subcontractor personnel stay in the immediate area where they are working. Unauthorized tours are prohibited, and violators shall be removed from the work at Lockheed's request.

ARTICLE 38 - SECURITY STANDARDS AND IDENTIFICATION OF EMPLOYEES

- A. The Contractor shall be responsible for requiring each of its employees and its subcontractor's employees on the work to display such identification as may be approved and/or directed by Lockheed.
- B. All Contractor and subcontractor personnel requiring entry to Lockheed buildings or perimeter fenced areas for more than five (5) days must obtain a Lockheed non-employee identification badge. Personnel requiring entry for five (5) days or less, must obtain a non-employee identification badge when time permits preparation and processing of the required written application; when time is insufficient, a one-day temporary badge must be obtained.
- C. Additional Security Clearance or proper escort may be required to enter certain closed areas. This may be obtained through the Lockheed Procurement Representative.

- D. Applications for non-employee identification badges must be submitted on a Lockheed badge request form which may be obtained from the Lockheed Procurement Representative. Forms must be typewritten and require the following information about each contractor employee
- (1) Full name (no initials or nicknames)
  - (2) Social Security Number
  - (3) Birthplace and Date of Birth
  - (4) Home Address
  - (5) Period of time entry into Lockheed controlled areas is required
  - (6) Citizenship
  - (7) Naturalized citizens must give date, place and number of naturalization petition.

A minimum seventy-two (72) hours is required to process a badge request form, except for personnel who will require access to Lockheed facilities for five (5) days or less; such requests will be processed in one (1) work day. It is therefore required that the Contractor and subcontractors contact the Procurement representative as soon as possible after award to arrange for badging.

- E. Contractor or subcontractor personnel requiring access to Lockheed facilities for one to five days must obtain a temporary badge by presenting to the Lockheed Identification Unit a written job referral or dispatch slip showing the individual's name, the name of the contractor and/or subcontractor, and the building number of the job site, and the Lockheed contract number.
- F. All prescribed identification shall immediately be delivered to Lockheed Plant Protection for cancellation upon the release of any employees or the completion of the contract.
- G. All contractor employees shall be United States citizens.

ARTICLE 39 - SAFETY

- A. The Contractor shall abide by all applicable safety, environmental protection, and hazardous waste handling and disposal rules and regulations in connection with the performance of work hereunder at the construction site.
- B. Protective wearing apparel and equipment shall be provided by the Contractor and worn or used by Contractor personnel according to the nature of the hazard and job.

- C. Lockheed owned equipment shall not be used by Contractor personnel except as specifically permitted under Paragraph D of this ARTICLE.
- D. When the use of Lockheed owned lifting equipment, defined as any crane, derrick, hoist, or aerial lift will be requested to perform work on this contract, the following requirements shall be met.
  - (1) All work procedures and locations of works shall be provided in writing to the Lockheed Occupational Safety & Health Office, 0/47-20, for review and concurrence approval.
  - (2) (a) Use of such lifting equipment requested to be provided by Lockheed shall be approved by the Occupational Safety & Health Office, 0/47-20.
  - (b) Lockheed owned equipment shall be operated by Lockheed personnel only.
  - (c) Contractor shall sign an agreement whereby it agrees to indemnify Lockheed against all claims, damages, losses and expenses arising out of a Contractor's use of any such equipment as well as obtain insurance to protect the work and the equipment against damage or loss thereto. This insurance would be in addition to that insurance already required under ARTICLE 33 hereof.
- E. Lifting equipment provided by the Contractor with a rated capacity of over three tons shall comply with the following:
  - (1) Such lifting equipment must comply with the State of California Safety Orders as set forth on California Administrative Code Title 8.
  - (2) A current certificate to verify that such equipment is in compliance with Administrative Code Title 8 and that equipment is maintained and operated in accordance with the manufacturer's instructions will be furnished by the Contractor.
  - (3) A certificate stating that the operator of subject equipment is properly qualified to operate the equipment to be used on the job will be furnished by the Contractor.
  - (4) The certificates required above will be provided to the Construction Engineer prior to arrival of the equipment on Lockheed premises.
- F. The Contractor agrees to hold Lockheed harmless against any loss, cost (including attorney's fees), damage or liability resulting from the Contractor's failure to comply with the provisions of this paragraph and as provided in ARTICLE 31, INDEMNIFICATION.

- G. When performing work on Lockheed premises, and/or providing or using chemicals identified by the State as causing Cancer, birth defects, or other reproductive harm, the Contractor shall comply with the requirements of Proposition 65, The Safe Drinking Water and Toxic Act of 1986. The Contractor agrees to hold Lockheed harmless against any loss, cost (including attorney's fees), damage, or liability arising out of Contractor's failure to comply with Proposition 65 as provided in ARTICLE 31, INDEMNIFICATION.
- H. When installing and/or servicing equipment under this contract, the Contractor shall comply with 29 CFR 1910.147, The Control of Hazardous Energy (Lockout/Tagout), and shall be responsible for determining which equipment must be locked and tagged out and, using his own locks and LMSC provided tags, shall proceed to lock and tag out such equipment.

ARTICLE 40 - WORKING HOURS

- A. The Contractor shall perform all work described in the contract during Lockheed normal working hours unless otherwise specified in the contract or authorized by the Lockheed Procurement Representative. Lockheed normal working hours are defined as follows:

7:30 AM to 4:30 PM in open areas  
8:30 AM to 4:00 PM in closed areas (guards required)

Requests for guard coverage in secured work areas shall be made to the construction engineer at least seventy-two hours prior to the needed coverage.

- B. Unless prior written consent is given by the Lockheed Procurement Representative no work shall be performed on any weekends or Lockheed Holidays.

ARTICLE 41 - VALUE ENGINEERING INCENTIVE CLAUSE

- A. This clause applies to cost reduction proposals initiated and developed by the Contractor for changing the drawings, specifications or other requirements of this Fixed Price Construction Contract. This clause does not however apply to any such proposal unless it is identified by the Contractor at the time of its submission to Lockheed, as a proposal submitted pursuant to this clause. The cost reduction proposals contemplated are those that:

- (1) Would result in less costly items than those specified herein without impairing any of their essential functions and characteristics such as service life, reliability, economy of operation, ease of maintenance, and necessary standardized features, and
- (2) Would require, in order to be applied to this contract, a change to this contract.

- B. Cost reduction proposals as defined herein will be processed expeditiously and in the same manner as prescribed for any other proposal which would likewise necessitate issuance of a change to this contract. As a minimum, the following information will be submitted by the Contractor with each proposal:

- (1) A description of the difference between the existing contract requirement and the proposed change and the comparative advantage and disadvantages of each.
  - (2) An itemization of the requirements of this contract which must be changed if the proposal is adopted and a recommendation as to how to make each such change (e.g., suggested revision).
  - (3) An estimate of the reduction in performance costs that will result from adoption of the proposal, taking into account the cost of implementation by the Contractor and the basis for the estimate.
  - (4) A prediction of any effects the proposed change would have on any other costs.
  - (5) A statement of the time by which a change to this contract adopting the proposal must be issued so as to obtain the maximum cost reduction during the remainder of the contract, noting any effect on maintaining the contract delivery schedule.
  - (6) The dates of any previous submission of the proposal, the numbers of any contracts or subcontracts or purchase orders under which submitted, and the previous actions in connection therewith, if known.
- C. Lockheed shall not be liable for any delay in acting upon, or for any failure to act upon, any proposal submitted pursuant to this clause. The decision of Lockheed as to the acceptance of any such proposal under this contract shall be final. Unless and until a change to this contract incorporates the subject proposal, the Contractor shall remain obligated to perform in accordance with its existing terms. Lockheed may accept in whole or in part any cost reduction proposal submitted pursuant to this clause by issuing a change to this contract which will identify the cost reduction proposal on which it is based.
- D. If a cost reduction proposal submitted pursuant to this clause is accepted under this contract, an equitable adjustment in contract price and in any other affected provisions of the contract shall be made in accordance with this clause and the "Changes" ARTICLE 10 of this contract. If the equitable adjustment involves a reduction in contract price, it shall be established by determining the amount of the total estimated decrease in the Contractor's cost of performance resulting from the adoption of the cost reduction proposal taking into account the cost of implementing the change by the Contractors and reducing the contract price by fifty percent (50%) of such decrease. If the equitable adjustment involves an increase in the contract price, such increase shall be established under the "Changes" ARTICLE 10 rather than under this Paragraph D. The resulting contract modification will state that it is made pursuant to this clause.
- E. Cost reduction proposals submitted under the provisions of any other contract also may be submitted under this contract for consideration pursuant to the terms of this clause.
- F. Contractor may restrict Lockheed's or the Government's right to the use of data provided on any sheet of a Value Engineering proposal or of supporting data, submitted pursuant to this



clause, in accordance with the terms of the following legend if the legend is marked on such sheet:

This data furnished pursuant to the Value Engineering Incentive clause of \*\_\_\_ shall not be disclosed outside Lockheed or the Government, or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a Value Engineering proposal submitted under this clause. This restriction does not limit Lockheed's or the Government's right to use information contained in this data if it is or has been obtained from another source or is otherwise available, without limitations. If such a proposal is accepted by Lockheed by issuance of a change to this contract under said clause and the "Changes" ARTICLE of this contract after the use of this data in such an evaluation, the Government and Lockheed shall have the right to duplicate, use, and disclose any data pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do.

ARTICLE 42 - PUBLICITY

No photographs will be taken by the Contractor or any subcontractors and no news release, public announcement, denial or confirmation of same or any part of the subject matter of this contract shall be made without the prior written approval of Lockheed's Public Relations Office.

ARTICLE 43 - RECORDS

The Contractor agrees that Lockheed or any of its duly authorized representatives shall, until the expiration of two years after final payment under this contract, have access to and the right to examine any directly pertinent books, document, papers and records of the Contractor and Subcontractors related to the work performed under or pursuant to said contract.

ARTICLE 44 - SHIPMENT TO SITE

The Contractor shall address all packages to its own company, in care of Lockheed Missiles & Space Company, at the proper address, and enter the Lockheed Missiles & Space Company contract number on packing sheets attached to the outside of all packages and containers. Failure to comply may result in inconvenience and delay. Such delay will not be cause for an equitable adjustment.

ARTICLE 45 - OPERATIONS AND STORAGE AREAS

- A. All operations of the Contractor (including storage of materials) upon Lockheed's premises shall be confined to areas authorized or approved by Lockheed.
- B. Temporary buildings (storage sheds, shops, offices, etc.) or signs may be erected by the Contractor only with the approval of Lockheed and shall be built with labor and materials furnished by the Contractor without expense to Lockheed. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor

at its expense upon the completion of the work.

- C. All materials, appliances and equipment are to be transported and stored in such a manner as to avoid deterioration or defacement from any cause.

ARTICLE 46 - CLEANING UP

- A. The Contractor shall at all times keep the construction area, including storage areas used by it, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of Lockheed.
- B. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to Lockheed.

ARTICLE 47 - EQUAL EMPLOYMENT OPPORTUNITY

The Equal Opportunity clause in Section 202 of Executive Order 11246 as amended, and the implementing rules and regulations (Title 41 code of Federal Regulations Part 60) are incorporated herein by reference, unless this order is exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 or provisions of any superseding Executive Order. Unless this order is so exempted, the applicable Equal Employment Opportunity Compliance certificate previously submitted by the contractor is incorporated herein by reference.

ARTICLE 48 - BERYLLIUM REQUIREMENTS

If the Contractor is required to work in areas designated by Lockheed as "Beryllium Controlled Areas," the Contractor warrants that it is aware of the fact that beryllium has hazardous properties which make it essential that it be used and handled only by persons skilled in its use. Inhalation of beryllium dust is considered extra hazardous and extreme caution must be exercised to protect workers and the general public from harmful concentrations.

The following references are listed for Contractor information, but Lockheed makes no representations with regard to the adequacy or accuracy of the information contained therein:

- (1) American National Standard: Acceptable concentrations of Beryllium and Beryllium Compounds, ANSI Z37-29-1970.
- (2) American Industrial Hygiene Association; Hygienic Guide, Beryllium and Compounds, November 1964.
- (3) Stockinger, E. E. et. al.; Beryllium Industrial Hygiene Aspects Academic Press, New York (1966).

The Contractor's acceptance of this contract constitutes a representation by it that the Contractor is familiar with the properties, including toxicity, of Beryllium.

The Contractor further warrants that it will apprise its workmen, prior to their entry into said controlled areas, of these facts and that it will insert this clause into any and all subcontracts related to this contract.

ARTICLE 49 - 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 two thousand five hundred dollars (\$2,500.00)

ARTICLE 50 - AFFIRMATIVE ACTION FOR DISABLED VETERANS & VETERANS  
OF THE VIETNAM ERA

The Affirmative Action clause in Title 41 Code of Federal Regulations, Part 60, Subsection 250.4 and the implementing rules and regulations of the Department of Labor association therewith are incorporated herein by reference unless this contract is under ten thousand dollars (\$10,000.00)

ARTICLE 51 - UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL  
DISADVANTAGED BUSINESS CONCERNS

- A. This clause shall apply if this contract exceeds ten thousand dollars (\$10,000.00) and is neither (i) a contract for services which are personal in nature nor (ii) a contract (including all lower-tier subcontracts) which will be performed entirely outside of any state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- B. It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of Contracts let by any Federal agency.
- C. Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The term "subcontract" means any Agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract. Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration, or by the awarding agency of the United States which issued the contract under which this is a subcontract, as may be necessary to determine the extent of Contractor's compliance with this clause.
- D. As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

- E. The term "small business concern owned and controlled by socially and economically disadvantaged individuals," hereafter referred to as disadvantaged business, shall mean a small business concern (i) which is at least fifty-one (51) per centum owned by one or more socially and economically disadvantaged individuals or in the case of any publicly owned business, at least fifty-one (51) per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals and (ii) whose management and daily business operations are controlled by one or more of such individuals. Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans (i.e., U. S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U. S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan) and other minorities, or any individuals found to be disadvantaged by the Administration pursuant to Section B(a) of the Small Business Act.
- F. Contractor, acting in good faith, may rely on written representations by its subcontractors regarding their status as a small business concern owned and controlled by socially and economically disadvantaged individuals.
- G. Contractor shall include the provisions of this clause, including this Paragraph G. in each subcontract issued hereunder which exceeds ten thousand dollars (\$10,000.00) and which is not otherwise exempt in accordance with Paragraph A of this ARTICLE.

ARTICLE 52 - UTILIZATION OF WOMEN-OWNED BUSINESS CONCERNS

- A. This clause shall apply if this contract exceeds ten thousand dollars (\$10,000.00) and is neither (i) a contract for services which are personal in nature nor (ii) a contract including all lower-tier subcontracts which will be performed entirely outside of any state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- B. It is the policy of the United States Government that women-owned businesses shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the Federal agency.
- C. Contractor agrees to use its best effort to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, a "woman-owned business" concern means a business that is at least fifty-one percent (51%) owned by a women or women who are U.S. citizens and who also control and operate the business and that it is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day to day management.
- D. Contractor shall include the provisions of this clause, including this Paragraph D, in each

subcontract issued hereunder which exceeds ten thousand dollars (\$10,000.00) and which is not otherwise exempt in accordance with Paragraph A of this ARTICLE.

- E. Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as women-owned business concerns.

ARTICLE 53 - ARCHAEOLOGICAL ARTIFACTS

In the event Contractor unearths or otherwise discovers items which could possibly be construed as being archaeological artifacts, Contractor shall immediately stop all work in the area and promptly advise Lockheed of such discovery. Contractor further agrees that no work in the area will be resumed until written notification is received from Lockheed to do so. Lockheed agrees that, in the event Contractor incurs an increase in time or costs as a result of such work stoppage, an equitable adjustment will be made to the Contract.

ARTICLE 54 - GRATUITIES

Lockheed may at any time, by written notice to Contractor, terminate for default the right of Contractor to proceed under this contract if Lockheed has reasonable cause to believe that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of Lockheed with a view toward securing this Contract or securing favorable treatment with respect to the award or amendment of this Contract or the making of any determination with respect to the performance of this Contract. The rights and remedies of Lockheed provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.