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CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND

322-HEC

THE DOW CHEMICAL COMPANY

General Contract

Contract AT(29-1)-1106

226

Modification No. 92

Dow Chemical Co

TABLE OF CONTENTS

4T(29-1)-1106 vol 4

<u>ARTICLE</u>	<u>SUBJECT</u>	<u>PAGE</u>
I	DEFINITIONS	2
II	STATEMENT OF WORK	3
III	RELATIONSHIP OF PARTIES	3
IV	CHANGES	5
V	TERM, ESTIMATES OF COST, OBLIGATION OF FUNDS, FIXED FEE, AND FINANCIAL PLAN	6
VI	ALLOWABLE COSTS AND FIXED FEE	10
VII	PAYMENTS AND ADVANCES	20
VIII	ASSIGNMENT	25
IX	ACCOUNTS, RECORDS, AND INSPECTION	25
X	EXAMINATION OF RECORDS	29
XI	PROPERTY	30
XII	DRAWINGS, DESIGNS, SPECIFICATIONS	35
XIII	REQUIRED BONDS AND INSURANCE - EXCLUSIVE OF GOVERNMENT PROPERTY	37
XIV	TAXES	37
XV	LITIGATION AND CLAIMS	40

DEPARTMENT OF ENERGY DECLASSIFICATION REVIEW	
1ST REVIEW DATE: 12/29/06	DETERMINATION (CIRCLE NUMBER(S))
AUTHORITY: 2 AOC 2 AUC 2 AAD	1 CLASSIFICATION RETAINED
NAME: H. Co.../...	2 CLASSIFICATION CHANGED TO
2ND REVIEW DATE: 1/10/07	3 CONTAINS NO DOE CLASSIFIED INFO
AUTHORITY: 1/10/07	4 COORDINATE WITH
NAME: H. Co.../...	5 CLASSIFICATION CANCELLED
	6 CLASSIFIED INFO BRACKETED
	7 OTHER (SPECIFY):

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<u>ARTICLE</u>	<u>SUBJECT</u>	<u>PAGE</u>
XVI	DISPUTES	42
XVII	SUBCONTRACTS AND PURCHASE ORDERS	43
XVIII	PURCHASES FROM CONTRACTOR CONTROLLED SOURCES	44
XIX	SAFETY, HEALTH AND FIRE PROTECTION	47
XX	PERMITS	47
XXI	CONTRACTOR'S ORGANIZATION	48
XXII	LABOR	49
XXIII	PATENTS	55
XXIV	BUY AMERICAN ACT	58
XXV	SECURITY	60
XXVI	COVENANT AGAINST CONTINGENT FEES	63
XXVII	OFFICIALS NOT TO BENEFIT	64
XXVIII	TERMINATION	64
XXIX	CONTROL OF SS MATERIALS	76
XXX	RENEGOTIATION	77
XXXI	CLASSIFICATION	78
XXXII	UTILIZATION OF SMALL BUSINESS CONCERNS	78
XXXIII	SMALL BUSINESS SUBCONTRACTING PROGRAM	79
XXXIV	UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS	83

<u>ARTICLE</u>	<u>SUBJECT</u>	<u>PAGE</u>
XXXV	LABOR SURPLUS AREA SUBCONTRACTING PROGRAM	83
XXXVI	PRIORITIES, ALLOCATIONS AND ALLOTMENTS	86
XXXVII	AVAILABILITY OF APPROPRIATED FUNDS	86
XXXVIII	NUCLEAR HAZARDS INDEMNITY	86
XXXIX	INTERPRETATION OF THIS MODIFICATION	93

UNITED STATES
ATOMIC ENERGY COMMISSION
P. O. BOX 5400
ALBUQUERQUE, NEW MEXICO

Modification No. 92
Supplemental Agreement
Contract AT(29-1)-1106

SUPPLEMENTAL AGREEMENT

This SUPPLEMENTAL AGREEMENT, entered into this 21st day of August, 1962, effective on the 1st day of July, 1962, by and between THE UNITED STATES OF AMERICA (hereinafter called the "Government"), represented by the UNITED STATES ATOMIC ENERGY COMMISSION (hereinafter called the "Commission"), and THE DOW CHEMICAL COMPANY (hereinafter called the "Contractor"), a corporation organized and existing under the laws of the State of Delaware,

WITNESSETH THAT:

WHEREAS, effective January 18, 1951, the parties entered into Contract AT(29-1)-1106 for the management and operation by the Contractor of the Commission's Rocky Flats Plant and the performance of related work;
and

WHEREAS, the contract has been amended by Modifications Nos. 1 through 56, 58, 61 and 64, 66 through 71, 73 through 91; and

WHEREAS, the Commission desires to continue to utilize the management, engineering, scientific and manufacturing skills of the Contractor in

the operation of the Plant on the terms and conditions hereinafter set forth and the Contractor is willing to do so; and

WHEREAS, the parties desire to extend the term of the contract for five years and to reflect their agreement on changes in various other provisions of the contract; and

WHEREAS, the parties wish to incorporate their entire agreement into this one document and its appendices; and

WHEREAS, this Supplemental Agreement is executed by the Commission under the authority of the Atomic Energy Act of 1954, as amended.

NOW THEREFORE, the parties agree that, effective July 1, 1962, Contract AT(29-1)-1106, together with its appendices, is amended to read in its entirety as follows:

ARTICLE I - DEFINITIONS

As used in this contract:

1. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

2. The term "Commission" means the United States Atomic Energy Commission or any duly authorized representative thereof, including the Contracting Officer except for the purpose of deciding an appeal under the article entitled "Disputes".
3. Except as otherwise provided in this contract, the term "sub-contracts" includes purchase orders under this contract.

ARTICLE II - STATEMENT OF WORK

The Contractor shall furnish the personnel, services, materials and equipment (except such services, materials and equipment as are furnished by the Government) necessary for the management and operations of the Commission's Rocky Flats Plant and for the performance of the other work described in Appendix B, "Scope of Work", which by this reference is incorporated in and made a part of this contract.

ARTICLE III - RELATIONSHIP OF PARTIES

1. In the performance of the work the Contractor shall employ its own policies, procedures and practices insofar as their use is in accord with other provisions of this contract.
2. In order to achieve maximum utilization of the Contractor's technical and managerial capabilities in the performance of the work under this contract, the Contractor may transfer people into and

out of the Rocky Flats Division, subject to the other terms of this contract, taking every care to be as diligent about proper staffing at Rocky Flats as it is in staffing its commercial installations.

3. For the reasons stated in paragraph 2. of this article, the Contractor will, subject to the terms and conditions of this contract, provide for an interchange of technical and other information in both directions between its Rocky Flats Division and the parent Company.
4. The Contractor recognizes that the Commission is responsible under the law for the conduct of the atomic energy program and that the proper discharge of the Commission's responsibilities requires that it shall have the power to exercise control over the contract work and full access to information concerning the Contractor's performance of such work.
5. The Commission recognizes that the Contractor is an established industrial organization with proved capabilities both technical and administrative and the Commission and the Contractor recognize that the proper discharge of the Contractor's responsibilities requires that the Contractor shall exercise its initiative, ingenuity and know-how in performing the contract work.

6. To the end that the contract work shall be performed as effectively as possible, it is the intention of both parties to achieve a high degree of cooperation and mutual understanding between their respective organizations by keeping each other informed as to matters of mutual interest having a significant bearing on the performance of the work; by consulting with each other in an endeavor to arrive at mutually satisfactory solutions of problems arising out of the work; and by using all reasonable efforts to resolve differences between them which may occur from time to time.
7. Nothing in this article shall be construed as modifying or amending any other provision of this contract.

ARTICLE IV - CHANGES

1. Changes and Adjustment of Fee. The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions requiring additional work within the general scope of this contract or directing the omission of or variation in work covered by this contract. If any such direction results in a material change in the amount or character of the work described in Appendix B, "Scope of Work", an equitable adjustment of the fixed fee shall be made in accordance with the agreement of the

parties and the contract shall be modified in writing, accordingly. Any claim by either party for an adjustment under this article must be asserted in writing within 90 days from the date of receipt by the Contractor of the notification of change unless, within the said 90 days, the parties mutually agree to an extension of time for asserting the claim. The parties agree to prosecute in good faith any claim so made in the shortest possible time after the notice of claim is filed. A failure to agree on an equitable adjustment under this article shall be deemed to be a dispute within the meaning of the article entitled "Disputes".

2. Work to Continue: Nothing contained in this article shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

ARTICLE V - TERM, ESTIMATES OF COST, OBLIGATION OF FUNDS,
FIXED FEE, AND FINANCIAL PLAN

1. Term. The term of this contract shall be from January 18, 1951 through June 30, 1967, unless sooner terminated in accordance with the provisions of the article entitled "Termination".
2. Estimate of Cost and Fixed Fee. The estimated cost of the work under this contract for the period July 1, 1962 through June 30, 1963 is \$ 38,476,000.00, exclusive of the Contractor's fixed fee

for performance of such work. The Contractor's fixed fee for performance of the work during the period July 1, 1962 through June 30, 1963, is \$1,212,000. The Contractor shall also receive a fixed fee for performance of work in subsequent periods during the term of this contract, each such fee to be based upon the work to be performed in the period involved and to be as negotiated and determined prior to the start of the period involved or at such later time as the parties may agree. If the aforementioned determination has not been made prior to the start of the period involved, the Contractor shall continue to receive monthly payments on account of fixed fee at the rate in effect during the prior period. Appropriate adjustment will be made promptly upon determination of the fixed fee for the new period.

3. Obligation of Funds. The Commission has obligated a total of One Hundred Sixty-six Million Seven Hundred Seventeen Thousand Five Hundred Dollars (\$166,717,500) under this contract for all purposes since its inception.
4. Revised Obligation of Funds. The amount of funds obligated by the Government under this contract may be increased unilaterally from time to time by the Commission by written notice to the

Modification No. 92
Contract AT(29-1)-1106

Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract).

5. Limitation of Obligation. Payments on account of costs shall not in the aggregate at any time exceed the amount of funds presently obligated hereunder less the Contractor's fixed fee.
6. Financial Plan. From time to time the Contracting Officer and the Contractor will agree upon a financial plan. The Contractor agrees to use its best efforts to keep allowable expenditures and commitments under the contract within such program cost levels as are included in the then current financial plan. Such financial plan shall indicate such items, if any, as are limitations to be followed by the Contractor. Whenever it becomes apparent that any such program cost level will be exceeded, the Contractor will inform the Contracting Officer of this and of the Contractor's estimate of the amount of such excess.
7. Notice of Cost Approaching Funds Obligated - Contractor Excused Pending Increase When Obligation is Reached. Whenever the

Modification No. 92
Contract AT(29-1)-1106

Contractor has reason to believe that the total cost of the work under this contract (exclusive of the Contractor's fixed fee) will be substantially greater or less than the total amount then obligated by the Government under this contract, the Contractor shall promptly notify the Contracting Officer in writing. The Contractor shall also notify the Contracting Officer in writing when the aggregate of expenditures and outstanding commitments allowable under this contract, including the Contractor's fixed fee, is such that the Contractor estimates that there are left available funds sufficient only to continue operations for 90 days. When such expenditures and outstanding commitments, including the Contractor's fixed fee, equal 100% of such amount, the Contractor shall make not further commitments or expenditures (except to meet existing commitments) and shall be excused from further performance of the work unless and until the Contracting Officer thereafter shall increase the funds obligated with respect to this contract.

8. Right to Terminate not Affected. The giving of any notice by either party under this article shall not be construed to waive or impair any right of either party to terminate the contract under the provisions of the article entitled "Termination".

9. Cost Information. The Contractor shall maintain current cost information adequate to reflect the cost of performing the work under this contract at all times while the work is in progress, and shall prepare and furnish to the Government such written estimates of cost and information in support thereof as the Contracting Officer may request.
10. Correctness of Estimates Not Guaranteed. Neither the Government nor the Contractor guarantees the correctness of any estimate of cost for performance of the work under this contract, and there shall be no adjustment in the amount of the Contractor's fixed fee by reason of errors in the computation of estimates or differences between such estimates and the actual cost of performance of the work.

ARTICLE VI - ALLOWABLE COSTS AND FIXED FEE

1. Compensation for Contractor's Services. Payment for the allowable cost as hereinafter defined, and of the fixed fee as provided in the article entitled "Term, Estimates of Costs, Obligation of Funds, Fixed Fee and Financial Plan", shall constitute full and complete compensation for the performance of the work under this contract.
2. Allowable Cost. The allowable cost of performing the work under this contract shall be the costs and expenses (less applicable income and other credits) that are actually incurred by the Contractor

Modification No. 92
Contrat AT(29-1-1106

in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and are determined to be allowable pursuant to this paragraph 2. The determination of the allowability of cost hereunder shall be based on: (i) reasonableness, including the exercise of prudent business judgment; (ii) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work; and (iii) recognition of all exclusions and limitations set forth in this article or elsewhere in the contract as to types or amounts of items of cost (the amount determined to be unallowable due to such limitations shall not exceed the excess cost caused by or the excess expense incurred in the failure to observe the limitation). Allowable cost shall not include cost of any item described as unallowable in paragraph 4. of this article, except as indicated therein. Failure to mention an item of cost specifically in paragraph 3. or paragraph 4. shall not imply either that it is allowable or that it is unallowable. If the Contracting Officer determines that an item of cost is not allowable, he shall so notify the Contractor in writing with the reasons therefor. The question of allowability, unless disposed of by mutual agreement, shall be disposed of in accordance with the article entitled

"Disputes" to the extent that article is by its terms applicable to the question involved.

3. Examples of Items of Allowable Cost. Subject to the other provisions of this article, the following examples of items of cost of work done under this contract shall be allowable to the extent indicated:
- a. Bonds and insurance including self-insurance, as provided in the article entitled "Required Bonds and Insurance - Exclusive of Government Property".
 - b. Communication costs, including telephone services, local and long distance calls, telegrams, cablegrams, radiograms, postage and similar items.
 - c. Consulting services (including legal and accounting), and related expenses, as approved by the Contracting Officer.
 - d. Litigation expenses, including reasonable counsel fees, incurred in accordance with the article entitled "Litigation and Claims".
 - e. Losses and expenses (including settlements made with the consent of the Contracting Officer) sustained by the Contractor in the performance of the work under this contract and approved by the Contracting Officer, except the losses and expenses expressly made unallowable under other provisions of this contract.

Modification No.92
Contract AT(29-1)-1106

- f. Materials, supplies and equipment, including freight, transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.
- g. Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer; and preparation of invention disclosures, reports, and related documents.
- h. Personnel costs and related expenses incurred in accordance with, and as specifically set forth in Appendix A or amendments thereto.
- i. Disposal of Government-owned property and the restoration or cleanup of site and facilities to the extent directed or approved by the Contracting Officer.
- j. Repair, maintenance, inspection and replacement of Government-owned property, subject to the limitations set forth in other provisions of this contract.
- k. Subcontracts and purchase orders, including purchases from Contractor-controlled sources, subject to approvals required by other provisions of this contract.

- l. Subscriptions to trade, business, technical, and professional periodicals, as approved by the Contracting Officer.
 - m. Taxes, fees, and charges levied by public agencies which the Contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.
 - n. Utility services, including electricity, gas, water, steam, and sewerage.
 - o. Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters.
 - p. Bonuses and incentive compensation subject to the approval of the Contracting Officer.
 - q. Travel, subsistence and basic salary of the Contractor's employees not carried on the Plant payroll when such employees travel away from their regular duty stations to perform work under this contract with the prior written approval of the Contracting Officer.
4. Examples of Items of Unallowable Costs. The following examples of items of costs are unallowable under this contract to the extent indicated:

Modification No. 92
Contract AT(29-1)-1106

- a. Advertising, except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the Contracting Officer as clearly in furtherance of work performed under the contract.
- b. Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the Contractor.
- c. Bidding expenses and costs of proposals except as approved by the Contracting Officer.
- d. Bonuses and similar compensation under any other name which (i) are not pursuant to an agreement between the Contractor and employee prior to the rendering of the services or an established plan consistently followed by the Contractor; (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder; or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.
- e. Central and branch office expenses of the Contractor, except as specifically set forth in the contract.
- f. Commissions, bonuses and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto.

Modification No. 92
Contract AT(29-1-1106

- g. Contingency reserves, provision for.
- h. Contributions and donations.
- 1. Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line, declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method), or sum-of-the-years-digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.
- j. Dividend provisions or payments.
- k. Entertainment costs, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in this contract.
- 1. Fines and penalties including assessed interest, resulting from violations of, or failure of the Contractor to comply with Federal, state, or local laws or regulations, except when incurred in accordance with the written approval of the Contracting Officer or as a result of compliance with the provisions of this contract.

Modification No. 92
Contract AT(29-1)-1106

- m. Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of the Commission applicable to transfers of such property to the Contractor from others.
- n. Insurance (including any provision of a self-insurance reserve) on any person where the Contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined in the article entitled "Property".
- o. Interest, however represented, except interest incurred in compliance with article entitled "Taxes", bond discounts and expenses, and costs of financing and refinancing operations.
- p. Legal, accounting, and consulting services and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or re-organization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent-infringement litigation.
- q. Losses (including litigation expenses, counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment

Modification No. 92
Contract AT(29-1)-1106

of Contractor-owned capital assets, including investments; losses on other contracts, including the Contractor's contributed portion under cost-sharing contracts; losses in connection with price reductions to and discount purchases by employees and others from any source; and losses where such losses or expenses --

(1) are compensated for by insurance or otherwise or which would have been compensated by insurance required by law or by written direction of the Contracting Officer but which the Contractor failed to procure or maintain through its own fault or negligence;

(2) result from wilful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel as defined in the article entitled "Property";

(3) represent liabilities to third persons for which the Contractor has expressly accepted responsibility under other terms of this contract.

- r. Membership in trade, business, and professional organizations except as approved by the Contracting Officer.
- s. Precontract costs, except as expressly made allowable under other provisions in this contract.
- t. Research and development costs, unless specifically provided for elsewhere in this contract.

SECRET

Modification No. 92
Contract No. AT(29-1)-1106

- u. Selling and distribution activities and related expenses not applicable to the performance of this contract.
- v. Storage of records pertaining to this contract after completion of operations under this contract irrespective of contractual or statutory requirement of the preservation of records.
- w. Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the article entitled "Taxes", taxes on income and excess profits; and special assessments on Contractor-owned land which represent capital improvement.
- x. Travel expenses of the Contractor's responsible supervising representative except to the extent that such travel is in connection with work under this contract, and travel expenses of the Contractor's officers, proprietors, executives, administrative heads, and other employees of the Contractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the Contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the Contracting Officer.

- y. Cost of any actions with respect to which the Contractor fails to secure prior or advance approval or authorization where such approval or authorization is required by any provision of this contract , unless such actions are subsequently ratified by the Contracting Officer.

ARTICLE VII - PAYMENTS AND ADVANCES

1. Installments of Fixed Fee. Except as otherwise provided for in the article entitled "Termination," the fixed fee provided for in the article entitled "Term, Estimates of Costs, Obligation of Funds, Fixed Fee, and Financial Plan," shall be paid in 12 equal monthly installments as they accrue during each year within the term of this contract.
2. Payments on Account of Allowable Costs and Fixed Fee. Payments for (i) allowable costs, (ii) the Contractor's fixed fee, and (iii) other items specifically approved in writing by the Contracting Officer, shall be made from advances of Government funds.
3. Special Bank Account - Use. All advances of Government funds shall be made by check payable to the Contractor and shall be deposited only in a Special Bank Account or Accounts, established by an Agreement for Special Bank Account in the form and containing the provisions set forth in Appendix C of this contract. The Contractor shall likewise deposit in the Special Bank Account any other revenues received by the Contractor in connection with the work under this contract, other than the Contractor's fixed fee. No part of the funds in the Special Bank Account shall be (i) mingled

Modification No. 92
Contract AT (29-1)-1106

with any funds of the Contractor, or (ii) used for a purpose other than that of making payments for costs allowable under this contract or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer shall at any time determine that the balance on such bank account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.

4. Title to Funds Advanced. Title to the unexpended balance of any funds advanced and of the bank account established pursuant to this article shall remain in the Government and be superior to any claim of lien of the bank of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title, or interest in or to such advance other than the right to make expenditures therefrom as provided in this article
5. Review and Approval of Costs Incurred. The Contractor shall prepare and submit annually as of June 30, a voucher for the total of net expenditures accrued (i. e., net costs incurred) for the period covered by the voucher, and the Commission, after audit and appropriate adjustment, will approve such voucher. This approval

by the Commission will constitute and acknowledgment by the Commission that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with the Commission accounting policies, but will not relieve the Contractor of responsibility for the Commission's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to the Commission.

6. Financial Settlement. The Government shall promptly pay to the Contractor the unpaid balance of allowable costs and fixed fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after
- (i) compliance by the Contractor with the Commission's patent clearance requirements, and (ii) the furnishing by the Contractor of:
 - a. An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, or other credits applicable to allowable costs under the contract;
 - b. A closing financial statement;
 - c. The accounting for Government-owned property required by the article entitled "Property"; and

- d. A release discharging the Government, and its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:
- (1) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;
 - (2) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that such claims are not known to the Contractor on the date of the execution of the release; and provided further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and
 - (3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including

Modification No.92
Contract AT(29-1)-1106

reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

In arriving at the amount due the Contractor under this paragraph 6, there shall be deducted (a) any claim which the Government may have against the Contractor in connection with this contract, and (b) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Bank Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

7. Claims. Claims for credit against funds advanced or for payment shall be accompanied by such supporting documents and justifications as the Contracting Officer shall prescribe. It is the intent of this paragraph to allow the Contracting Officer to require such justification as may be necessary to reasonably support any individual claim or claims, but it is not intended to disturb or change generally the Contractor's system of maintaining records if that system is in accordance with the Contractor's normal practice.
8. Discounts. The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebated, allowances, credits, salvage, and commissions unless the

Contracting Officer finds that such action is not in the best interest of the Government.

9. Revenues. All revenues, other than the Contractor's fixed fee, accruing to the Contractor in connection with the work under this contract shall be Government property and shall be deposited in the Special Bank Account to be available for payment of allowable cost under this contract.
10. Direct Payment of Charges - Deductions. The Government reserves the right, upon 10 days' written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.

ARTICLE VIII - ASSIGNMENT

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

ARTICLE IX - ACCOUNTS, RECORDS, AND INSPECTION

1. Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed fee accruals, and the receipt, use and

Modification No. 92
Contract AT(29-1)-1106

disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to the Commission and in accordance with generally accepted accounting principles consistently applied.

2. Inspection and Audit of Accounts and Records. All books of account and records relating to this contract shall be subject to inspection and audit by the Commission at all reasonable times, before and during the period of retention provided for in paragraph 4. below, and the Contractor shall afford the Commission proper facilities for such inspection and audit.
3. Audit of Subcontractors' Records. The Contractor also agrees, with respect to any subcontracts (including lump sum or unit price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to conduct an audit of the costs of the subcontractor in a manner satisfactory to the Commission or to have the audit conducted by the next higher tier subcontractor in a manner satisfactory to the Contractor and the Commission, except when the Commission elects to waive such audit or approves other arrangements for the conduct of the audit.

4. Disposition of Records. Except as otherwise agreed upon by the Government and the Contractor, all financial and cost reports, books of account, and supporting documents, and other data evidencing costs allowable and revenues and other applicable credits under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract and final audit of all accounts hereunder. All other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of 6 years after settlement of the contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor. The Contractor shall, subject to the Commission security regulations and requirements, and the other provisions of this contract, have the right to inspect and at its own expense duplicate any records delivered or to be delivered to the Government by the Contractor under this contract; provided, however, that nothing in this paragraph 4. shall constitute any commitment on the part of the Government to retain such records for any period beyond the Commission's customary retention periods for records of this type.

5. Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
6. Inspections. The Commission shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.
7. Subcontracts. The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs 1. through this paragraph 7. of this article in all subcontracts (including lump sum or unit price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.
8. Internal Audit. The Contractor agrees to conduct an internal audit and examination satisfactory to the Commission of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Contracting Officer.

ARTICLE X - EXAMINATION OF RECORDS

1. The Contractor agrees that the Commission and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of 3 years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract unless the Commission authorizes their prior disposition.
2. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Commission and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract unless the Commission authorizes their prior disposition. The term "subcontract" as used in this article excludes (a) purchase orders not exceeding \$2500; and (b) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

3. Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

ARTICLE XI - PROPERTY

1. Furnishing of Government Property. The Government reserves the right to furnish any property required for the performance of the work under this contract.
2. Title to Property. Title to all property furnished by the Government shall remain in the Government except as otherwise provided in this article. Except as otherwise directed by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, the cost of which is allowable as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to property, the cost of which is reimbursable under any cost-type subcontract or purchase order entered into by the Contractor under this contract shall pass to and vest in the Government upon (i) purchase by the subcontractor or vendor specifically for use under such subcontract or purchase order, (ii) issuance for use of such

SECRET

property in the performance of such subcontract or purchase order, (iii) commencement of processing or use of such property in the performance of such subcontract or purchase order, or (iv) payment of the cost thereof at the Government's expense, whichever first occurs. An appropriate clause implementing the intent of this paragraph will be incorporated in all subcontracts and purchase orders. Property furnished by the Government and property purchased or furnished by the Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as a personalty by reason of affixation to any realty.

3. Identification and Marking. To the extent directed by the Contracting Officer, the Contractor shall identify Government property coming into the Contractor's possession or custody by marking or segregation in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government. The Contractor shall provide additional descriptive and identification marking of raw materials and other property as the Contracting Officer may direct.

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

Government property in the Contractor's possession or custody. Special measures shall be taken by the Contractor in the protection of and accounting for any classified or special materials involved in the performance of this contract, in accordance with the regulations and requirements of the Commission.

6. Risk of Loss of Government Property. Notwithstanding any other provision of this contract to the contrary, the Contractor shall not be liable for loss or destruction of or damage to Government Property in the Contractor's possession unless, (1) such loss, destruction or damage results from wilful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or unless (2) such loss, destruction or damage results from a failure on the part of the Contractor's managerial personnel to take reasonable steps to comply with any appropriate specific, detailed, self-contained written directives of the Contracting Officer to safeguard such property under Paragraph 5. hereof; provided, that the Contractor's liability with respect to (2) above shall be limited to two-thirds of the total fee to be paid to the Contractor for the period July 1, 1962 to June 30, 1967. The term "Contractor's managerial personnel" as used herein means the Contractor's directors, corporate officers, and the supervisory representative referred to in the article entitled "Contractor's Organization".
7. Steps to be Taken in Event of Loss. Upon the happening of any loss or destruction of or damage to Government property in the possession or custody of the Contractor estimated to involve a cost in excess of \$500.00 the Contractor shall immediately inform the Contracting Officer of the occasion and extent thereof. The Contractor shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property, if and as directed

Modification No. 92
Contract AT(29-1)-1106

by the Contracting Officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

8. Replacement and Acquisition of Capital Facilities. The replacement of any Government-owned structures, equipment and facilities made necessary by normal wear and tear and estimated to involve an increase in capital investment of more than \$20,000.00, and the acquisition and installation of any additional structures, equipment and facilities estimated to cost in excess of \$20,000.00, shall be subject to the approval of the Contracting Officer.
9. Government Property for Government Use Only. Government property shall be used only for the performance of this contract.
10. Property Management. The Contractor shall maintain a property management system acceptable to the Contracting Officer, covering all phases of supply activity including stock control and disposal. The system shall be designed to procure, utilize, protect, and control all property adequately. Procedures for the performance of such functions shall have the approval of the Contracting Officer and will not be materially changed thereafter without the approval of the Contracting Officer. The property management activities shall be subject to inspection and audit by the Commission at all reasonable times.

11. Subcontracts. The Contractor agrees to insert in all subcontracts and purchase orders it enters into involving the use of Government property, furnished to or otherwise acquired by subcontractors or vendors, provisions satisfactory to the Contracting Officer which will enable the Contractor to meet the requirements of this article. The Contractor further agrees to include in such subcontracts and purchase orders a provision to the effect that if the subcontractor is reimbursed for any loss or destruction of or damage to Government property through insurance, or any other means, this reimbursement will be paid to the Contractor for the account of the Government; provided, however, that nothing in such provision shall affect any other liability of the subcontractor or vendor as to such property, result in double payment by the subcontractor or vendor due to such other liability or affect any limitation or certification in the sub-contract or purchase order with respect to insurance.

ARTICLE XII - DRAWINGS, DESIGNS, SPECIFICATIONS

1. All drawings, sketches, designs, design data, specifications, note-books, technical and scientific data or information, and all photographs, negatives, reports, findings, recommendations, data, and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereof, which

are developed by the Contractor under this contract, shall be subject to inspection by the Commission at all reasonable times (for which inspection the proper facilities shall be afforded the Commission by the Contractor and its subcontractors), shall be the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the Contractor and its subcontractors and vendors for additional compensation and shall, subject to the right of the Contractor to retain a copy of said material for its own use, be delivered to the Government, or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the progress of the work or in any event as the Contracting Officer shall direct upon completion or termination of this contract. The Contractor's right of retention and use shall be subject to the security and patent provisions of this contract.

2. Unless otherwise authorized by the Contracting Officer, the Contractor shall insert this article, including this paragraph 2, in all its subcontracts and purchase orders under this contract.
3. The Contractor agrees that it will not knowingly include any copyrighted material in any material furnished or delivered under this contract without a written license or consent of the copyright owner, unless specific written approval of the Commission for the inclusion of such copyrighted material is secured.

4. It is recognized that during the course of the performance of work under this contract or subsequent thereto, the Contractor, its employees, or its subcontractors may from time to time desire to publish, within the limits of security requirements, information regarding technical or scientific developments achieved in performance of the work. In order that public disclosure of such information will not adversely affect the patent interest of the Commission, patent approval for release shall be secured from the Commission prior to any such publication.

ARTICLE XIII - REQUIRED BONDS AND INSURANCE - EXCLUSIVE
OF GOVERNMENT PROPERTY

The Contractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the Contracting Officer. The terms of any such bond or insurance policy shall be submitted to the Contracting Officer for approval. In view of the provisions of the article entitled "Property", the Contractor shall not procure or maintain for its own protection at the cost of the Government any insurance (including self-insurance or reserves) covering loss or destruction of or damage to Government-owned property.

ARTICLE XIV - TAXES

1. The Contractor agrees to notify the Contracting Officer promptly of:

Modification No. 92
Contract AT(29-1)-1106

- a. The assessment or levy of any state or local tax (i) on property of the United States in the Contractor's custody or possession in connection with this contract, (ii) on any alleged interest of the Contractor in such property, (iii) on the Contractor's use of such property, or (iv) measured by the value of such property.
 - b. The imposition on or billing to the Contractor of any state or local excise or privilege tax, including sales and use taxes, gross receipts taxes, gross income taxes, franchise taxes, occupation taxes, and similar taxes, the payment of which the Contractor would claim to be an allowable cost under this contract.
 - c. The assessment or levy, imposition on or billing to the Contractor, of any tax from which exemption is granted by Federal, state or local law, or which the Contractor believes or the Contracting Officer has previously advised the Contractor that the Commission believes, to be invalid under the Constitution or laws of the United States or of a particular state.
2. The Contractor shall refrain from paying any of the foregoing taxes until and unless authorized to do so in writing by the Contracting

Officer and further agrees to take such action as the Contracting Officer may direct in writing:

- a. Assert exemption from, or to pay under protest, in such manner and form as the Contracting Officer shall prescribe, any such tax;
 - b. To institute in the Contractor's own name proceedings to resist the assessment, levy, imposition, or collection of any such tax, or to recover the tax (paid with the approval of the Contracting Officer), permitting the Government to join in such proceedings;
 - c. To join with the Government in such proceedings as it might institute to resist the assessment, levy, imposition, or collection of any such tax, or to recover the tax (paid with the approval of the Contracting Officer); and
 - d. To allow the Government to defend, join in the defense, intervene, or otherwise participate in any proceeding instituted against the Contractor with respect to the tax.
3. The Contractor agrees that all recoveries or credits in respect of the foregoing taxes (including interest) shall be for the benefit of the Commission.

4. Any amount which the Contractor refrains from paying pursuant to this article which is ultimately required to be paid over to a taxing authority as a lawful tax shall be an allowable cost under the contract. In addition to the costs otherwise provided for in this contract, the Commission will allow the Contractor all reasonable costs, including but not necessarily limited to, attorneys' fees (when the Contractor engages counsel with the written approval of the Contracting Officer), and penalties and interest, if any, incurred by the Contractor through compliance with this article.
5. The Contractor further agrees to incorporate in all subcontracts and purchase orders such provisions as are necessary to implement this article.

ARTICLE XV - LITIGATION AND CLAIMS

1. Initiation of Litigation. If the Government requires the Contractor to initiate litigation, including proceedings before administrative agencies, in connection with this contract, the Contractor shall proceed with the litigation in good faith as directed from time to time by the Contracting Officer.
2. Defense and Settlement of Claims. The Contractor shall give the Contracting Officer immediate notice in writing of any action, including any proceeding before an administrative agency, filed against

Litigation

SECRET

Modification No. 92
Contract AT(29-1)-1106

the Contractor arising out of the performance of this contract, and timely notice of any claim against the Contractor the cost and expense of which is allowable under the article entitled "Allowable Costs and Fixed Fee". Except as otherwise directed by the Contracting Officer, in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Contractor may with the Contracting Officer's approval settle any such action or claim, shall effect at the Contracting Officer's request an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor, and if required by the Contracting Officer, shall authorize representatives of the Government to settle or defend any such claim or action and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the Contractor is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting

Officer, proceed with the defense of the action in good faith; and in such event the defense of the action shall be at the expense of the Government; provided, however, that the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence. Inadvertent failure to fulfill the reporting requirements of this paragraph shall not, of itself, result in a disallowance of cost.

ARTICLE XVI - DISPUTES

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

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Modification No. 92
Contract AT(29-1)-1106

grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this article, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

2. This "Disputes" article does not preclude consideration of law questions in connection with decisions provided for in paragraph 1, above; provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

ARTICLE XVII - SUBCONTRACTS AND PURCHASE ORDERS

1. When Subcontracts are Authorized - Requirements Applicable to Subcontracts and Purchase Orders. The Contractor may, but only when authorized by the Contracting Officer, enter into subcontracts in writing for the performance at the site of the work described in Appendix B, "Scope of Work," of any part of the work under this contract. Purchase orders shall not be entered into by the Contractor for items whose purchase is expressly prohibited by the written directions of the Contracting Officer. The Government

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reserves the right at any time to require that the Contractor submit any or all other contractual arrangements, including but not limited to purchase orders or clauses of purchase orders, for approval, and provide information concerning methods, practices, and procedures used or proposed to be used in subcontracting and purchasing. The Contractor shall use methods, practices, or procedures in subcontracting and purchasing which are acceptable to the Commission. Subcontracts and purchase orders shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation properly to supervise and coordinate the work of subcontractors) and shall be in such form and contain such provisions as are required by this contract or as the Contracting Officer may prescribe.

2. Effect of Subcontracting on Fee. The subcontracting of a greater or lesser part of the work under this contract than was contemplated at the time the fee for a particular period was determined shall not entail any adjustment in the Contractor's fixed fee for that period.

ARTICLE XVIII - PURCHASES FROM CONTRACTOR CONTROLLED SOURCES

1. Prior to awarding a purchase order to a division, department or affiliate of the Contractor on the basis of competitive bids, the Contractor shall obtain the review and approval of the Contracting

SEARCHED

Modification No. 92
Contract AT(29-1)-1106

Officer of the bid solicitation, evaluation and proposed awards.

In all such cases in which the Contractor has design responsibility, the Contractor shall prepare proper specifications, drawings, and such other data as may be necessary, on a basis which will permit fair and open competition and orderly and timely procurement with relation to the work.

2. The Contractor may procure on a negotiated basis, subject to the limitations in this paragraph and subparagraph a. or b. as applicable, materials, supplies, equipment, or services manufactured or sold by the Contractor's divisions, departments, or affiliates from such divisions, departments, or affiliates; provided, however, that unless otherwise authorized by the Contracting Officer, no such procurement shall be made by the Contractor without prior written approval of the Contracting Officer.
 - a. Standard commercial articles and standard supplies (of Contractor-controlled sources, other than those manufactured or produced within the contracting component) which have published unit prices of less than \$100.00, or such higher amount as may be approved by the Contracting Officer, may be transferred and charged at amounts not in excess of (i) the net sales price concurrently charged the most favored

nonaffiliated customer for such articles in the same quantities, or (ii) the lowest net sales price at which equivalent articles are available from other sources whichever is lower in price, without further negotiation as to unit price. If the Contractor does not meet this requirement, any excess cost occasioned thereby is unallowable. The Contracting Officer may require use of the equivalent articles available from other sources at a lower price or the solicitation of competitive bids from other suppliers of such articles. "Standard commercial articles" are those produced by the Contractor in the normal course of business, carried in stock or previously manufactured on a production basis, and having catalog item numbers and prices. "Standard supplies" are those carried in stock for use in normal operation.

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

ARTICLE XIX - SAFETY, HEALTH AND FIRE PROTECTION

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

ARTICLE XX - PERMITS

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

ARTICLE XXI - CONTRACTOR'S ORGANIZATION

1. Organization Chart. As promptly as possible after the execution of this contract the Contractor shall furnish to the Contracting Officer a chart showing the names, duties and organization of key personnel employed or to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.
2. Supervising Representative of Contractor. A competent full time resident supervising representative of the Contractor satisfactory to the Manager of the Commission's Albuquerque Operations Office shall be in charge of the work at the Plant.
3. Control of Employees. The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. In the event the Contractor fails to remove any employee from the contract work whom the Commission, after consultation and review with the Contractor, deems to be incompetent, careless or insubordinate, or whose continued employment on the work is deemed by the Commission to be contrary to the public interest, the Government reserves the right to require the Contractor to remove the employee for cause.

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ARTICLE XXII - LABOR

1. Eight-hour Law of 1912 - Overtime Compensation. This contract, to the extent that it is of a character specified in the Eight-Hour Law of 1912, as amended (40 U.S. Code 324-326), and is not covered by the Walsh-Healey Public Contracts Act (41 U.S. Code 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912, as amended, and to all other provisions and exceptions of said law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontracting for any part of said work contemplated, shall be required or permitted to work more than 8 hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this paragraph 1. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of 8 hours per day; and work in excess of 8 hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this paragraph 1., a

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penalty of \$5.00 shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than 8 hours upon said work without receiving compensation computed in accordance with this paragraph 1., and all penalties thus imposed shall be withheld for the use and benefit of the Government.

2. Nondiscrimination in Employment. In connection with the performance of work under this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination provision.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
- c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this nondiscrimination provision, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.
- e. The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books,

SECRET

records and accounts by the Commission and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

- f. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract or with any of the said rules, regulations, or orders, this contract may be canceled in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.
- g. The Contractor will include the provisions of the foregoing paragraphs a. through f. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to Section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor

The Contractor will take such action with respect to any subcontract or purchase order as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

3. Notice of Labor Disputes. Whenever an actual or potential labor dispute is delaying or threatens to delay the performance of the work, the Contractor shall immediately notify the Contracting Officer in writing. Such notice shall include all relevant information concerning the dispute and its background.
4. Convict Labor. In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.
5. Walsh-Healey Public Contracts Act. If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed \$10,000.00

and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

6. Davis-Bacon Act. Upon request of the Commission and acceptance thereof by the Contractor, the Contractor shall procure by subcontract the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the Commission and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, of a public building or public work. If it becomes necessary for the Contractor to perform some work under this contract that is within the scope of the Davis-Bacon Act, the Contractor will comply with all provisions of such Act in the performance thereof.

ARTICLE XXIII - PATENTS

1. Whenever any invention or discovery is made or conceived by the Contractor or its employees or consultants in the course of or under this contract, the Contractor shall furnish the Commission with complete information thereon; and the Commission shall have the sole power to determine whether or not and where a patent application shall be filed, and to determine the disposition of the title to and rights under any application or patent that may result; provided, however, that in the fields of light metals and chemistry relating to the Contractor's business, including equipment and instrumentation relating thereto, the Contractor in any event shall retain at least a nonexclusive, irrevocable, royalty-free license with the right to issue sub-licenses under such invention, discovery, application, or patent, such license and sub-licenses being limited to the manufacture, use and sale for purposes other than use in the production or utilization of special nuclear material or atomic energy. Subject to the license and sub-licensing rights retained by the Contractor as provided in this paragraph, the judgment of the Commission on these matters shall be accepted as final;

and the Contractor, for itself and for its employees and consultants, agrees that the inventor or inventors will execute all documents and do all things necessary or proper to carry out the judgment of the Commission.

2. No claim for pecuniary award or compensation under the provisions of the Atomic Energy Acts of 1946 and 1954 shall be asserted by the Contractor or its employees or consultants with respect to any invention or discovery made or conceived in the course of or under this contract.
3. Except as otherwise authorized in writing by the Commission, the Contractor will obtain patent agreements to effectuate the purposes of paragraphs 1. and 2. of this article from all persons who perform any part of the work under this contract, except such clerical and manual labor personnel as will not have access to technical data.
4. Except as otherwise authorized in writing by the Commission, the Contractor will insert in all subcontracts and purchase orders, including consultant agreements made hereunder, provisions making paragraphs 1. through 4. of this article applicable to the subcontractor or vendor and their employees; provided, however,

that the provisions of this article need not be inserted in subcontracts and purchase orders for ordinary commercial materials or equipment that are to be furnished "off -the-shelf", and as to such subcontracts and purchase orders an indemnity provision, as set forth below, in favor of the Government shall be obtained:

Patent Indemnity:

The Seller (or Subcontractor) agrees to indemnify the Buyer and the Government, their officers, agents, servants, and employees against liability of any kind (including costs and expenses incurred) for the use of any invention or discovery and for the infringement of any Letters Patent (not including liability, arising pursuant to Section 183, Title 35, (1952) U.S. Code, prior to the issuance of Letters Patent) occurring in the performance of this purchase order (or subcontract) or arising by reason of the use or disposal by or for the account of the Buyer or the Government of items manufactured or supplied under this purchase order (or subcontract).

5. The Contractor hereby grants to the Government a perpetual royalty-free non-exclusive, non-transferable license to directly, or

through contractors, practice in the Plant, and for the same purposes in or at other facilities operated by or for the Commission, but not elsewhere, all patented inventions, secret processes, technical information and know-how of the Contractor which are incorporated in the construction or operation of the Plant by the Contractor; provided, however, the Contractor shall at the time of incorporation of any such patented inventions, secret processes, technical information or know-how specifically identify the same, and the Commission's right to practice, directly or through contractors, shall be limited as above set forth, unless the secret processes, technical information or know-how are generally available to the public or have been made available to the Commission from other sources.

ARTICLE XXIV - BUY AMERICAN ACT

1. In acquiring end products, the Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this article:
 - a. "Components" means those articles, materials, and supplies which are directly incorporated in the end products;

- b. "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and
 - c. A "domestic source end product" means (i) an unmanufactured end product which has been mined or produced in the United States, and (ii) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50% of the costs of all its components. For the purposes of this l. c. (ii), components of foreign origin of the same type or kind as the products referred to in 2. b. or c. of this article shall be treated as components mined, produced, or manufactured in the United States.
2. The Contractor agrees that there will be used under this contract (by the Contractor, subcontractor, materialmen, and suppliers) only domestic source end products, except end products:
- a. Which are for use outside the United States;
 - b. Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

- c. As to which the Commission determines the domestic preference to be inconsistent with the public interest; or
- d. As to which the Commission determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

ARTICLE XXV - SECURITY

- 1.. Contractor's Duty to Safeguard Restricted Data and Other Classified Information. In the performance of the work under this contract the Contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding restricted data and other classified matter and protecting against sabotage, espionage, loss, and theft, the classified documents, materials, equipment, processes, etc., as well as such other material of high intrinsic or strategic value as may be in the Contractor's possession in connection with performance of work under this contract. Except as otherwise expressly provided in the contract the Contractor shall upon completion or termination of this contract transmit to the Commission any classified matter

SECRET

in the possession of the Contractor, or any person under the Contractor's control in connection with performance of this contract.

2. Regulations. The Contractor agrees to conform to all security regulations and requirements of the Commission.
3. Definition of Restricted Data. The term "Restricted Data," as used in this article, means all data concerning (i) design, manufacture, or utilization of atomic weapons; (ii) the production of special nuclear material; or (iii) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954.
4. Security Clearance of Personnel. Except as the Commission may authorize in accordance with the Atomic Energy Act of 1954, the Contractor shall not permit any individual to have access to Restricted Data until the designated investigating agency shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security. As used in this paragraph, the term

SECRET

"designated investigating agency" means the United States Civil Service Commission or the Federal Bureau of Investigation, or both, as determined pursuant to the provisions of the Atomic Energy Act of 1954. Access to classified information other than Restricted Data shall not be granted unless the recipient possesses appropriate security clearance.

5. Criminal Liability. It is understood that disclosure of information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data or any Top Secret, Secret, or Confidential matter that may come to the Contractor or any person under the Contractor's control in connection with work under this contract, may subject the Contractor, his agents, employees, and subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, 68 Stat. 919, as amended.) (See also Executive Order 10104 of February 1, 1950, 15 F.R. 597.)
6. Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the Contracting Officer, the Contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

SECRET

7. It is further agreed that, if the Contractor has complied with the security regulations and requirements of the Commission as it has agreed to do under the first two paragraphs of this article, as to the matter covered by such regulations or requirements, such compliance should be deemed performance of this article.
8. Nothing in this article shall be deemed to extend the Contractor's liability for Government-owned property, as such liability is to be found in the article of this contract entitled "Property."

ARTICLE XXVI - COVENANT AGAINST CONTINGENT FEES

1. Warranty - Termination or Deduction for Breach. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise

recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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

ARTICLE XXVII - OFFICIALS NOT TO BENEFIT

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

ARTICLE XXVIII - TERMINATION

1. The performance of work under this contract may be terminated in accordance with this article by the Government, without prejudice to any claims which the Government may have against the Contractor, in whole, or from time to time in part, (i) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and

shall fail to cure such default within a period of 30 days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default, or (ii) whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government, i. e., for the convenience of the Government. Any termination hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. The Commission agrees that it will grant to the Contractor in such notice as long a period to wind up the work as it can reasonably and in good faith grant. If, after a Notice of Termination of this contract for default is given under (i) above, it is determined that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government, in either its sovereign

SECRET

or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays of subcontractors or vendors due to any of such causes (unless the Contracting Officer shall determine that the supplies or services to be furnished by the subcontractor or vendor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule) the Notice of Termination shall be deemed to have been issued under (ii) above and the rights and obligations of the parties hereto shall, in such event, be governed accordingly. The Contractor may treat as a dispute under the article entitled "Disputes" its disagreement, if any, that it is in default, to the extent that article is, by its terms, applicable to the question involved.

2. After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall (i) stop work under the contract on the date and to the extent specified in the Notice of Termination; (ii) place no further purchase orders or subcontracts for materials, services or facilities

Modification No. 92
Contract AT(29-1)-1106

except as may be necessary for completion of such portion of the work under the contract as is not terminated; (iii) terminate all purchase orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the purchase orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such purchase orders and subcontracts; (v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this article, settle all outstanding liabilities and all claims arising out of such termination of purchase orders and subcontracts, the cost of which would be allowable, in whole or in part, in accordance with the provisions of this contract; (vi) prepare and furnish the Contracting Officer with a list of Government-owned property in the custody or possession of the Contractor, together with a statement as to the location of such property; (vii) dispose of Government-owned property as directed by the Contracting Officer

in accordance with the article of this contract entitled "Property"; provided, however, that where disposition is to be by sale to third persons, the Contractor shall not be required to extend credit to any purchaser; (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fixed fee, or any item of allowable cost, under this article. Upon expiration of the plant clearance period, or such longer time as the Contracting Officer may allow, the Contractor shall submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of Government-owned property remaining in the Contractor's possession or custody. Within a reasonable time thereafter, the Contracting Officer will instruct the Contractor as to what disposition to make of such items and upon making such disposition, the Contractor will be relieved of

responsibility for those items of property. "Plant Clearance Period" means the period beginning with the effective date of termination and ending 60 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items of a particular property classification, such as raw materials, purchased parts, and work in process of the Contractor's termination inventory at any one Plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the Contractor.

3. After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer, in the form, with the information and with the certification prescribed by the Contracting Officer, a proposal for adjustment of the fixed fee by reason of the termination so that such adjustment may be made in accordance with paragraph 5. e. of this article. Such proposal shall be submitted promptly but in no event later than 6 months after the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 6 months period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action,

CHINESE

he may review and act upon any such proposal at any time after such 6 months period or any extension thereof. Upon failure of the Contractor to submit its proposal within the time allowed, the downward adjustment, if any, to be made in the Contractor's fixed fee by reason of the termination shall be as the Contracting Officer may determine on the basis of information available to him, and the Contractor shall not have any right of appeal under the article of this contract entitled "Disputes" from any such determination made by the Contracting Officer.

4. If performance of all or any part of the work under this contract is terminated for default of the Contractor, the Government or its designee may enter upon the premises occupied by the Contractor and take possession of all Government-owned materials, tools, machinery, equipment, and appliances used in the performance of the work so terminated which may be in the possession or custody of the Contractor and of all options, privileges, and rights of the Contractor with respect to such terminated work, and may complete or employ any other person or persons to complete the work.

5. In the event of termination of performance all, or any part of the work under this contract, full and complete settlement of all claims of the Contractor with respect to the terminated work shall include the following:
- a. The Government may, at the discretion of the Commission, assume and become liable for all obligations, commitments, and claims that the Contractor may have theretofore in good faith undertaken or incurred in connection with the terminated work, the cost of which would be allowable in accordance with the provisions of this contract; and the Contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as the Contracting Officer may require for the purpose of fully vesting in the Government all the rights and benefits of the Contractor under such obligations or commitments.
 - b. All costs and expenses allowable in accordance with this contract, not previously paid to the Contractor, for the performance of this contract prior to the effective date of the Notice of Termination and such of these costs as may

Modification No. 92
Contract AT(29-1)-1106

continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer; provided, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs. Reimbursement of such costs and expenses shall not be dependent upon the liquidation of assets.

- c. So far as not included under b. above, the cost of paying and settling claims arising out of the termination of work under subcontracts or purchase orders, as provided in paragraph 2 (v) above, which are properly chargeable to the terminated portion of the contract.
- d. The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of the settlement claim and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts and purchase orders thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of Government-owned property.

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- e. The Contractor's fixed fee elsewhere provided for in this contract shall be reduced to an amount equal to that portion of the total fixed fee the Contractor would have received but for such termination as the work actually completed prior to receipt of the Notice of Termination (as agreed upon by the Contractor and the Contracting Officer) bears to all the work the Contractor would have completed but for such termination. Subject to the provisions of paragraph 3. of this article, a failure of the parties to agree under this subparagraph 5.e. shall be treated as a dispute under the article entitled "Disputes." If performance of the work under the contract is terminated for the convenience of the Government, the Contractor shall be paid a fixed fee in an amount to be agreed upon as compensation to the Contractor for its services in closing out the work under this contract after the effective date of termination. If performance of the work under the contract is terminated for default of the Contractor, no payment on account of the Contractor's fixed fee shall be made for services rendered after the effective date of termination.

6. In arriving at the amount due the Contractor under this article there shall be deducted (i) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, including fixed fee payments received by the Contractor in excess of the total fixed fee payable to the Contractor under this contract pursuant to this article, (ii) any claim which the Government may have had against the Contractor in connection with this contract, and (iii) deductions due under the terms of this contract, and not otherwise recovered or credited to the Government, including, but not necessarily limited to, the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this article and not otherwise recovered by or credited to the Government. Nothing contained in this paragraph shall be construed to limit or effect any other remedies which the Government may have as a result of default by the Contractor.
7. In the event of a partial termination, the fixed fee to be paid to the Contractor by the Commission for the work under the continued portion of the contract shall, unless covered by paragraph 5.e.

of this article, be as agreed upon by the Contractor and the Contracting Officer, which agreement shall be evidenced by a written amendment to this contract. Failure of the parties to agree upon such a fixed fee shall be treated as a dispute under the article entitled "Disputes."

8. The Contractor may terminate performance of work under this contract by giving at least one year's written notice to the Contracting Officer prior to the effective date of such termination. Except as otherwise directed by the Contracting Officer, upon such termination the Contractor shall take the same action with respect to the terminated work as the Contractor would be required to take under this article if termination has been by the Government. In the event of termination by the Contractor hereunder, full and complete settlement of all claims of the Contractor with respect to the terminated work shall be made under this article in the same manner as if the termination were by the Government for its convenience. Termination by the Contractor under this article shall be without prejudice to any claims which the Contractor may have against the Government.

9. Nothing in this article shall waive or be deemed to waive the conditions of financial settlement required by paragraph 6. of the article entitled "Payments and Advances."

ARTICLE XXIX - CONTROL OF SS MATERIALS

As used in this article, the term "SS Materials" is a collective term which includes source material, special nuclear material and those other materials to which, by direction of the General Manager of the Commission, the provisions of Part 7400 of the AEC Manual apply. The Contractor shall, in a manner satisfactory to the Commission, establish accounting and measurement procedures, maintain current records and institute appropriate control measures for SS Materials in its possession commensurate with the national security and the economic value of the SS Materials. Transfers of SS Materials will not be made without prior written approval of the Commission. Except as otherwise authorized by the Commission, SS Materials in the Contractor's possession, custody, or control shall be used only for furtherance of the work under this contract. The Contractor shall be responsible for the control of such SS Materials in accordance with Part 7400 of the AEC Manual and shall make a part of each applicable purchase order, subcontract, and other commitment which

Modification No. 92
Contract AT(29-1)-1106

it enters into under this contract appropriate terms and conditions for the use of SS Materials and the responsibilities of the subcontractor or vendor regarding control of SS Materials. In the case of fixed price purchase orders, subcontracts, or other commitments, the terms and conditions with respect to SS Materials shall also include the financial responsibilities, if any, regarding such items as losses, scrap recovery, and product recovery.

ARTICLE XXX - RENEGOTIATION

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

1. This contract is subject to the Renegotiation Act of 1951, as amended (P. L. 9, 82d Cong., 65 Stat. 7; P. L. 764, 83d Cong., 68 Stat. 1116; P. L. 216 84th Cong., 69 Stat. 447; P. L. 870, 84th Cong., 70 Stat. 786; 86th Cong., 72 Stat. 1789; 86th Cong., 73 Stat. 210) and shall be deemed to contain all the provisions required by Section 104 of said Act.
2. The Contractor agrees to insert the provisions of this article including this paragraph 2. in all subcontracts, as that term is defined in Section 103(g) of the Renegotiation Act of 1951.

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ARTICLE XXXI-CLASSIFICATION

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

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

ARTICLE XXXII - UTILIZATION OF SMALL BUSINESS CONCERNS

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

ARTICLE XXXIII - SMALL BUSINESS SUBCONTRACTING PROGRAM

1. The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall:
 - a. Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the "Utilization of Small Business Concerns" article and (iii) administer the Contractor's "Small Business Subcontracting Program."
 - b. Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.
 - c. Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications and delivery schedules so as to facilitate the participation of small business concerns.

Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall

be made to give all such small business concerns an opportunity to compete over a period of time.

d. Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this article and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding \$10,000, information substantially as follows:

- (1) Whether the award went to large or small business
- (2) Whether less than 3 or more than 2 small business concerns were solicited.
- (3) The reason for non-solicitation of small business if such was the case.
- (4) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii) above may be in such form as the Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or

division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this article will be kept available for review.

- e. Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of \$10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts" article in this contract. Such notice will state the Contractor's reasons for nonsolicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give SBA timely notice to permit SBA a reasonable period to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment, delay performance under the contract.

- f. Include the Utilization of Small Business Concerns article in subcontracts which offer substantial small business subcontracting opportunities.
 - g. Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.
 - h. Submit such information on subcontracting to small business concerns as is called for by the Contracting Officer.
2. A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in paragraph 1-1.701 of the Federal Procurement Regulations.
3. The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated, in whole or in part, for default.
4. The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 and which contains the "Utilization of Small Business Concerns" article, provisions which

shall conform substantially to the language of this article, including this paragraph 4., and to notify the Contracting Officer of the names of such subcontractors.

ARTICLE XXXIV - UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS.

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus, where this can be done consistent with the efficient performance of the contract, and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph 2. of the article entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (1) persistent labor surplus area concerns which are also small business concerns; (2) other persistent labor surplus area concerns; (3) substantial labor surplus area concerns which are also small business concerns; (4) other substantial labor surplus area concerns; and (5) small business concerns which are not labor surplus area concerns.

ARTICLE XXXV - LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

1. The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcon-

tracts within their capabilities. In this connection, the Contractor shall:

- a. Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Concerns in Labor Surplus Areas" article, and (iii) administer the Contractor's "Labor Surplus Area Subcontracting Program";
 - b. Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;
 - c. Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;
 - d. Maintain records showing procedures which have been adopted to comply with the policies set forth in this article;
- and

- e. Include the "Utilization of Concerns in Labor Surplus Areas" article in subcontracts which offer substantial labor surplus area subcontracting opportunities.
2. A "labor surplus area concern" is a concern which will perform, or cause to be performed, a substantial proportion of any contract awarded to it in "Areas of Substantial Labor Surplus" (also called "Areas of Substantial Unemployment"), as designated by the Department of Labor. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production performed in persistent or substantial labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 per cent of the price of such contract.
3. The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 and which contains the "Utilization of Concerns in Labor Surplus Areas" article, provisions which shall conform substantially to the language of this article including this paragraph 3., and to notify the Contracting Officer of the names of such subcontractors.

ARTICLE XXXVI - PRIORITIES, ALLOCATIONS AND ALLOTMENTS

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

ARTICLE XXXVII - AVAILABILITY OF APPROPRIATED FUNDS

The duties and obligations of the Government hereunder calling for the expenditure of appropriated funds shall be subject to the availability of funds appropriated by the Congress which the Commission may legally spend for such purposes.

ARTICLE XXXVIII - NUCLEAR HAZARDS INDEMNITY

1. This article is incorporated into this contract pursuant to the authority contained in Section 170 of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).
 - a. The definitions set out in the Act shall apply to this article.
 - b. The term "contract location" means any Commission facility, installation or site at which contractual activity under this contract is being carried on, and any Contractor-owned or controlled facility, installation, or site at which

the Contractor is engaged in the performance of contractual activity under this contract.

2. Except as hereafter permitted or required in writing by the Commission, the Contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. The Commission may at any time require in writing that the Contractor provide and maintain financial protection of such a type and in such amount as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, provided that the costs of such financial protection will be reimbursed to the Contractor by the Commission.
3. a. To the extent that the Contractor and other persons indemnified are not compensated by any financial protection permitted or required by the Commission, the Commission will indemnify the Contractor, and other persons indemnified, against (i) claims for public liability as described in subparagraph b. of this paragraph 3. and (ii) the reasonable costs of investigating and settling claims, and defending

SECRET

suits for damage for such public liability, provided that the Commission's liability under all indemnity agreements entered into by the Commission under Section 170 of the Act, including this contract, shall not exceed \$500,000,000, including such reasonable costs, in the aggregate for each nuclear incident, irrespective of the number of persons indemnified in connection with this contract.

- b. The public liability referred to in subparagraph a. of this paragraph 3. is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of or results from:
- (1) A nuclear incident which takes place at a contract location; or
 - (2) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the Contractor's employees, individual consultants, borrowed personnel, or other persons for the consequences of whose acts or omissions the Contractor is liable, provided that such incident is

not covered by any other indemnity agreement entered into by the Commission pursuant to Section 170 of the Act; or

- (3) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or by-product materials to or from a contract location; provided such incident is not covered by any indemnity agreement entered into by the Commission with the transporting carrier, or with a carrier's organization acting for the benefit of the transporting carrier, or with a licensee of the Commission, pursuant to Section 170 of the Act; or
- (4) A nuclear incident which involves items (such as equipment, material, facilities, or design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by the Commission pursuant to Section 170 of the Act.

Modification No. 92
Contract AT(29-1)-1106

4. a. When the Commission shall determine that the Government will probably be required to make indemnity payments under the provisions of paragraph 3. above, the Commission shall have the right to, and shall, collaborate with the Contractor and any other person indemnified in the settlement or defense of any claim and shall have the right (i) to require the prior approval of the Commission for the payment of any claim that the Commission may be required to indemnify hereunder, and (ii) to appear through the Attorney General on behalf of the Contractor or other person indemnified in any action brought upon any claim that the Commission may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense.
- b. The Contractor or other persons indemnified shall immediately give the Commission (i) written notice of any claim or

action against the Contractor or other person indemnified as to which the indemnification obligations of the Commission under this article may apply, and (ii) copies of all pertinent papers received by the Contractor or other person indemnified relating to such claim or action. If the settlement or defense of any such action or claim is undertaken by the Commission, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where any such action is not covered by a policy of insurance, the Contractor or other person indemnified shall proceed with the defense of such action in good faith if notified in writing by the Commission that the Commission does not elect to defend such action.

5. The indemnity provided by this article shall not apply to public liability arising out of or in connection with any activity which is performed at a licensed facility, and which is covered by a Commission indemnity agreement authorized by Section 170 of the Act.
6. The obligations of the Commission under this article shall not be affected by any failure on the part of the Contractor to fulfill its

obligation under this contract, and shall be unaffected by the death, disability, or termination of existence of the Contractor or by the completion, termination, or expiration of this contract.

7. The parties to this contract enter into this article upon the condition that this article may be amended at any time by the mutual written agreement of the Commission and the Contractor and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.
8. The provisions of this article shall not be limited in any way by, and shall be interpreted without reference to, any other article of this contract (including the article entitled "Disputes"); provided, however, that the following provisions of this contract: the articles entitled "Covenant Against Contingent Fees," "Officials Not to Benefit," "Assignment," and "Examination of Records," and any provisions later added to this contract which, under applicable Federal law, including statutes, Executive orders and regulations, is required to be included in agreements of the type contained in this article, shall apply to this article.

ARTICLE XXXIX - INTERPRETATION OF THIS MODIFICATION

Nothing contained in this Supplemental Agreement shall be deemed to have application to any matters pertaining to the performance of Contract AT(29-1)-1106 during the contract periods from January 18, 1951 through June 30, 1957, and from July 1, 1957 through June 30, 1962, it being understood that the rights of the parties as to such matters during those periods shall be determined solely in accordance with the provisions of Contract AT(29-1)-1106 for each such period. The rights of the parties pertaining to the performance of Contract No. AT(29-1)-1106 during the contract period commencing July 1, 1962, shall be determined solely in accordance with the terms of this Supplemental Agreement, as it may be amended, without reference to, and without giving interpretative weight to, any provisions of the contract covering periods prior to July 1, 1962. Any adoption by the parties in this Supplemental Agreement of a different form, or any omission of provisions contained in previous contractual documents or addition of provisions not there contained, shall not be construed so that the determination of any of the rights of the parties under this Supplemental Agreement or the prior contractual documents is affected by reason of such omissions or additions, or the adoption of the different form.

SM

All directives, interpretations, and instructions heretofore transmitted to the Contractor by the Commission shall continue to be effective (except to the extent that the Contractor in any particular case is specifically advised to the contrary in writing) with respect to the performance of work under the contract after June 30, 1962.

IN WITNESS WHEREOF, the parties hereto have executed this Supplemental Agreement in several counterparts.

THE DOW CHEMICAL COMPANY

BY: /s/ H.D. DORN

TITLE: Executive Vice President

THE UNITED STATES OF AMERICA
BY: ATOMIC ENERGY COMMISSION

BY: /s/ E.F. HERTFORD

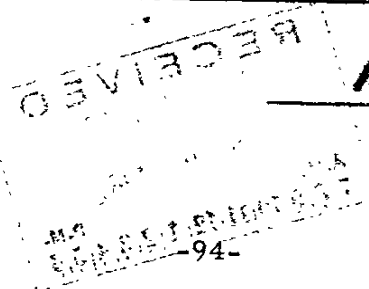
E.F. Hertford, Manager
Albuquerque Operations Office
Contracting Officer

CORPORATE CERTIFICATE

I, Calvin A. Campbell, certify that I am the Secretary of the corporation named as Contractor herein; that H.D. Dorn who signed this Supplemental Agreement on behalf of said corporation was then Executive Vice President of said corporation; that this Supplemental Agreement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers; and that I have set my hand and the seal of the said corporation hereto on this 27th day of August, 1962.

(SEAL)

/s/ Calvin A. Campbell



APPENDIX A
CONTRACT AT(29-1)-1106
THE DOW CHEMICAL COMPANY
MODIFICATION NO. 92

PERSONNEL POLICIES
WAGE & SALARY SCHEDULES
TRANSPORTATION, TRAVEL AND LIVING EXPENSES AND
RELATED POLICIES

Table of Contents

<u>Introduction</u>		<u>Page No.</u>
	<u>Part I - General Provisions</u>	
Section A	Recruitment and Help-Wanted Advertising	3
Section B	Consultants	3
Section C	Training	3
	<u>Part II - Exempt and Non-Exempt Salaried Employees</u>	
Section A	Coverage	6
Section B	Job Classifications (Positions) and Salary Ranges	6
Section C	Hiring Rates	9
Section D	Merit Increases (Non-Exempt Employees)	9
Section E	Pay Adjustments Resulting from Promotions and Job Re-evaluations (Non-Exempt Employees)	11
Section F	Adjustment of Salary Ranges (Non-Exempt Employees)	11
Section G	Salary Adjustments (Exempt Employees)	12
Section H	Progression Increases	16

	<u>Page No.</u>
Section I Computation of Salary for Partial Pay Period	18
Section J Shift Premium	19
Section K Requirements for Commission Approval Respecting Overtime	20
Section L Computation of Overtime	22
Section M Holidays	24
Section N Vacation Leave	25
Section O Sick Leave	29
Section P Personal Leave	30
Section Q Military Service and Military Training	30
Section R Separation Pay	32
Section S Jury or Courty Duty	33
Section T Voting Time	34
Section U Supplemental Merit Plan	34
Section V Summer Employment Program	34a
Section W Overtime Meals	34b
<u>Part III - All Other Employees</u>	
Section A Hourly-Paid Production and Maintenance and Cafeteria Employees	35
Section B Hourly Paid Plant Protection Employees	36
Section C Requirements for Commission Approval Respecting Overtime	37
Section D Separation Pay	37

		<u>Page No.</u>
<u>Part IV - Miscellaneous Benefits - All Employees</u>		
Section A	Coverage	38
Section B	Recreation and Morale Benefits	38
Section C	Medical Facilities	38
Section D	Medical Examination	39
Section E	Plant Newspaper	39
Section F	Attendance at Outside Meetings and Conferences	40
Section G	Safety Awards	40
Section H	Business Luncheons	40
<u>Part V - Transportation, Travel and Living Expenses</u>		
Section A	Definitions and General Provisions	42
Section B	Travel on Official Business	43
Section C	Living Expenses	44
Section D	Transportation of Dependents and Personal Effects	44
<u>Part VI - Insurance and Pensions</u>		
Section A	Group Insurance	47
Section B	Pension and Profit Sharing Plan	49

Modification No. 92
Contract AT(29-1)-1106

SCHEDULES

		<u>Page No.</u>
Schedule I	Wage and Salary Schedule	1
Schedule II	Labor Agreement	10
Schedule III	Overtime Chart	11
Schedule IV	Pension and Profit Sharing Plan	14

APPENDIX A
CONTRACT AT(29-1)-1106
THE DOW CHEMICAL COMPANY
MODIFICATION NO. 92

PERSONNEL POLICIES
WAGE & SALARY SCHEDULES
TRANSPORTATION, TRAVEL AND LIVING EXPENSES AND
RELATED POLICIES

It is the intention of the parties generally to treat employees of the Contractor engaged directly on the work hereunder no more and no less favorably than employees engaged in the Contractor's commercial operations.

The personnel policies, wage and salary schedules, and transportation, travel and living expense policies set out in this Appendix A are the policies of the Contractor which have been approved by the Commission for application to this Contract for the purpose of determining certain allowable costs as provided for in the Article of this Contract entitled "Allowable Costs and Fixed Fee", and shall apply to all Contractor employees regularly assigned to the Rocky Flats Plant, engaged in work under this Contract irrespective of the place of performance of work. However, failure to mention any item of cost in this Appendix is not intended to imply that it is either allowable or unallowable.

Through the Contractor's own standard audit procedures and executive review, the Contractor will take steps to ascertain that the policies and procedures set forth in this Appendix A are carried out.

SECRET

Contract AT(29-1)-1106

Either party may at any time request that this Appendix A be revised and the parties hereto agree to negotiate in good faith concerning any requested revision. Revisions to this Appendix A shall be accomplished by written modifications to the Contract, normally in the form of Reimbursement Authorizations, signed by both parties to this Contract. Unless otherwise approved by the Commission, the effective date of each such modification shall not precede the date on which the Contractor first requested such Contract modification in writing. Execution of such a modification by the General Manager, or higher authority, will be binding upon the Contractor. For ease of reference, all such modifications are hereinafter referred to as Reimbursement Authorizations.

Appendix A, Attachment
to Modification No. 92

PART I - GENERAL PROVISIONS

A. Recruitment and Help-Wanted Advertising

Reasonable expenses incurred for the recruitment of personnel for work under this Contract, including (i) Help-Wanted advertisements in newspapers, trade journals and other media, and (ii) services of employment agencies at rates not in excess of standard commercial rates, shall be allowable costs.

B. Consultants

As the work program requires, the Contractor may, with the prior approval of the Commission, hire technical and professional personnel as consultants. These personnel shall be hired at a daily rate and for relatively short periods. Requests to the Commission for approval of such hires will be accompanied by written evidence from the Contractor that the consultant has a proper personnel security clearance, if one is required, and that the daily rate to be paid the consultant is in keeping with the rate paid by other Commission contractors.

C. Training

1. Reasonable costs of training programs may be allowed, as required to increase employee skills and efficiency and to

Contract AT(29-1)-1106

develop techniques for solution of operating problems and to prepare participating employees for increased responsibility. Training programs may include orientation, job training, supervisory training, and executive development. Such programs and the cost thereof shall be subject to periodic review by the Commission. Special education and training courses and research assignments calling for attendance at educational institutions during the employees scheduled work period shall require the prior written approval of the Contracting Officer.

*2. Employees may be refunded 90 per cent of tuition costs for courses started on or subsequent to September 1, 1965, subject to the following conditions:

- a. Courses are taken outside of working hours.
 - b. The courses are:
 - (1) Directly related to the individual employee's current position or to a position to which he can reasonably aspire; or
 - (2) Required for attainment of a high school diploma;
- or

- (3) Required for completion of the approved curriculum developed for the particular employee leading to a degree directly related to the employee's current position or to a position to which he can reasonably aspire. Courses not directly related to the employee's current position or to a position to which he can reasonably aspire may be authorized and qualify for the refund if they are certified by the assigned faculty advisor as required or qualifying electives in the curriculum developed for the particular employee leading to a degree so directly related.
- c. Employees shall be full-time employees who have completed six months employment with the Contractor at Rocky Flats prior to the beginning of the course.
- *d. Each course shall be approved by the Employee Relations Manager or the Education Director.
- e. Courses shall be by attendance at a Contractor approved school, college, university or similar institution in the Denver-Boulder area.

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Contract AT(29-1)-1106

- f. Total of refunds paid to any employee will not exceed \$250 in any fiscal year.
 - g. Employee is not eligible to receive educational assistance under any applicable Veteran's Benefit Statute.
 - h. Refund shall be for tuition, laboratory fees and other such fees directly related to enrollment in a course; the cost of books, instruments, equipment, supplies and other such items connected with instruction will not be refunded.
 - i. The refund shall be paid to the employee after the completion of the particular semester, session or term, as appropriate, provided that the employee shall have submitted a certification from the institution that a grade of "B" or better was received by him in the particular course or courses taken.
3. In addition to in-plant job training, as otherwise provided in Paragraph 1. of this Section C., craft apprentices may be enrolled by the Contractor in courses offered by the International Correspondence School, to the extent that such courses are approved by the Colorado State Board for Vocational Education and meet basic standards as established

Contract AT(29-1)-1106

by the Federal Committee on Apprenticeship. The cost of International Correspondence School courses, and the number of apprentices enrolled in each course by the Contractor, shall be subject to the prior written approval of the Contracting Officer.

Revised by R. A. #49
Effective September 1, 1965

- 5 -

Appendix A, Attachment to
Modification No. 92

STANDARD

D. Educational Assistance Program for Degree Candidates

1. Adjustment of Work Schedules

Under certain conditions, the work schedules of employees may be adjusted in order for them to obtain course work that is not available to them after working hours. Three major considerations will generally be used to appraise individual situations:

- a. To what extent would rescheduling the employee's work hours affect operations of the department?
- b. How will the additional education help the man with his personal development?
- c. How will it help him with respect to his work for Dow at Rocky Flats?

Work schedules should be adjusted so that employees continue working on a full-time basis if possible.

2. Educational Leave of Absence Without Pay

- *a. A request for an educational leave of absence without pay shall be recommended by the employee's supervisor and the employee's department head and have the approval of the Employee Relations Manager. This recommendation will include a statement of the willingness on the part of the department head to reemploy, or the willingness of another department head to reemploy where the other department would be able to make better use of the employee's talents on reemployment.
- b. The employee shall have at least two full years of full-time employment by the Contractor at the Rocky Flats Plant prior to the inception of the leave of absence.
- c. The leave shall not exceed a maximum of two years.