

Unclassified

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Reviewer:  
D.L. Aron  
2/4/94

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March 5, 1964

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Route	Signed
✓ ENCL	✓
✓ MEMO	✓
✓ REP	✓
✓ RPO	✓
✓ RSO	✓
✓ RTO	✓
✓ RVO	✓
✓ RWO	✓
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✓ RAA	✓
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✓ RAW	✓
✓ RAX	✓
✓ RAY	✓
✓ RAZ	✓
Return to LIA 4133 East 30th	

MEMORANDUM

TO: C. L. Blue/N. E. Carey

SUBJECT: Purchase Order 8445605  
San Fernando Laboratories

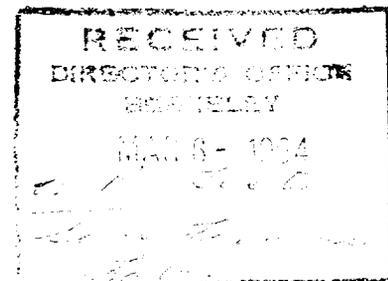
Attached are two (2) conformed copies each of the following executed documents:

- Purchase Order 8445605
- Terms and Conditions of P.O. 8445605
- Appendix A
- Appendix B

Original signed by J. A. McCarthy  
J. A. McCarthy

JAM:jh

- cc: W. B. Reynolds/R. P. Connell ←
- R. H. Dyer
- H. E. Schaefer
- R. J. Horton/E. F. Adkins
- D. A. Bruce (3)



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# CONFORMED COPY

UNIVERSITY OF CALIFORNIA LAWRENCE RADIATION LABORATORY

TERMS AND CONDITIONS OF PURCHASE ORDER 8445605

with

SAN FERNANDO LABORATORIES

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UNIVERSITY OF CALIFORNIA  
LAWRENCE RADIATION LABORATORY - PURCHASING DEPARTMENT  
- TERMS AND CONDITIONS OF PURCHASE ORDER 8445605

WITH

**SAN FERNANDO LABORATORIES**

INTRODUCTION

The Regents of the University of California, a California Corporation, hereinafter called the "University," have entered into a contract, W-7405-Eng. 48 with the United States Government, hereinafter called the "Government," represented by the Atomic Energy Commission hereinafter called the "Commission," for the performance of certain atomic energy research and development work at the University of California Lawrence Radiation Laboratory. This purchase order, hereinafter called "Subcontract," is entered into with **San Fernando Laboratories, Pacoima, California** hereinafter called the "Subcontractor," in furtherance of the performance of the work provided for in the prime contract.

In accepting this Subcontract, the Subcontractor agrees to perform the Subcontract work in accordance with the following terms and conditions. No other terms or conditions shall be binding upon the parties, unless accepted by them in writing. The parties hereby accept, incorporate into, and make a part of this Subcontract, APPENDIX A - REIMBURSEMENT OF COSTS and APPENDIX B - SCOPE OF WORK.

This Subcontract recognizes that audit hereunder is normally performed by the Commission or other Government Agency assigned the area of the Subcontractor's facility. Some of the requirements for University approval hereunder are imposed by the prime contract, statute, or governmental regulation. Subcontractor recognizes that failure to obtain approvals may jeopardize its reimbursement for costs accrued hereunder. All requests for University approval hereunder shall be directed to the Business Manager, University of California, Lawrence Radiation Laboratory, or his designee, hereinafter called "Business Manager."

ARTICLE I - SCOPE OF WORK

The Subcontractor shall furnish the necessary facilities, supplies, equipment and personnel, except such as are furnished by the University or the Government, to conduct certain work to be performed by the Subcontractor at **Pacoima, California and such other locations as the University may direct**, the nature and extent of which are more specifically described in APPENDIX B - SCOPE OF WORK hereto, and shall also deliver such materials, products, supplies and incidental services and reports as may be set forth in said APPENDIX B.

The University and the Commission shall have the right to inspect the work and activities of the Subcontractor under this Subcontract at such time and in such manner as they shall deem appropriate.

ARTICLE II - TERM

The work described in ARTICLE I - SCOPE OF WORK shall begin December 16, 1963 and shall continue through June 30, 1964 unless completely performed prior thereto or sooner terminated in accordance with the provisions of ARTICLE XVIII - TERMINATION.

ARTICLE III - ESTIMATES AND FIXED FEE

A - Initial Estimate of Cost and Fixed Fee

The presently estimated cost of the work under this Subcontract is **THIRTY THREE THOUSAND ONE HUNDRED SEVENTY NINE AND NO/100 DOLLARS (\$33,179.00)**, exclusive of the Subcontractor's fixed fee. The Subcontractor's fixed fee is **TWO THOUSAND SIX HUNDRED FIFTY FOUR AND NO/100 DOLLARS (\$2,654.00)**. The aggregate of presently estimated cost and fixed fee is **THIRTY FIVE THOUSAND EIGHT HUNDRED THIRTY THREE AND NO/100 DOLLARS (\$35,833.00)**.

B - Revised Estimates of Cost

The University and Subcontractor may mutually agree to revisions of the initial estimate of cost of the work (exclusive of the fixed fee) and from time to time further revise any revised estimate of cost; provided however, any revision of estimates of cost under this Subcontract shall be made with the final approval of the University.

C - Limit on Total Amount of Allowable Costs

Payments on account of costs shall not in the aggregate at any time exceed the amount of estimated costs specified in the Subcontract.

D - Notice of Costs Approaching Subcontract Amount  
Subcontractor Excused Pending Increase

The Subcontractor shall notify the University in writing when the aggregate of expenditures and outstanding commitments allowable under this Subcontract is equal to 90% of the initial or revised estimate of cost as indicated above (or such lesser percentage as the University may from time to time establish by notice to the Subcontractor). When such expenditures and outstanding commitments equal 100% of the estimated costs exclusive of the Subcontractor's fixed fee, the Subcontractor shall make no further commitments or expenditures (except to meet existing commitments) and shall be excused from further performance of the work unless and until the University thereafter shall increase the estimated cost of the work in accordance with B above.

E - The University's Right to Terminate Not Affected

The giving of any notice by either party under this ARTICLE III shall not be construed to waive or impair any right of the University to terminate the Subcontract under the provisions of ARTICLE XVIII - TERMINATION.

F - Cost Information

The Subcontractor shall maintain current cost information adequate to reflect the cost of performing the work under this Subcontract at all times while the work is in progress and shall prepare and furnish to the University such written estimates of cost and information in support thereof as the University may request. The Subcontractor shall notify the University whenever it becomes apparent that the total cost of the Subcontract (exclusive of fee) will exceed the estimate of the cost of the work then currently in effect.

G - Correctness of Estimates not Guaranteed

It is understood that neither the University nor the Subcontractor guarantees the correctness of any estimate of cost or estimate of time for the performance of the work under this Subcontract and that there shall be no adjustment in the amount of the Subcontractor's fixed fee by reason of errors in the computation of estimates or differences between such estimates and the actual cost or time for performance of the work.

ARTICLE IV - CONSIDERATION

Payment for allowable costs, reimbursable in accordance with APPENDIX A - REIMBURSEMENT OF COSTS hereto, and of the fixed fee set forth in ARTICLE III - ESTIMATES AND FIXED FEE, shall constitute complete compensation for Subcontractor's services, including profit and all items or kinds of expenses not allowable under the terms of this Subcontract.

ARTICLE V - PROCUREMENT

Subcontractor shall use subcontracting and purchasing practices which are acceptable to the University, including the following:

A - Subcontracts and purchase orders shall be made in the name of the Subcontractor only; shall not relieve the Subcontractor of any obligation under this Subcontract, (including among other things, the obligation to supervise and assure performance of the work described in APPENDIX B - SCOPE OF WORK), shall be made or confirmed in writing when in excess of \$100.00 and shall be in such form and contain such provisions as are required by this Subcontract.

B - The Subcontractor shall not enter into subcontracts, purchase orders, or any other contractual arrangement made pursuant to this Subcontract, on a cost plus percentage of cost basis or for items whose purchase is expressly prohibited by APPENDIX A - REIMBURSEMENT OF COSTS or any other provision of this Subcontract.

C - The written approval of the University must be obtained for purchase pursuant to this Subcontract of:

- (1) Any single total procurement in excess of \$1,000.00

- (2) Research and development work
- (3) Any single item (single requirement) of equipment, materials or services, the cost (total item cost) of which exceeds \$500.00
- (4) Services of a consultant
- (5) Construction of any building or appurtenance, building alterations, or acquisition of real property by purchase or by any interest therein.

D - The Subcontractor shall not subcontract with any other party for the work defined in ARTICLE I - SCOPE OF WORK (other than the furnishing of standard or commercial articles of raw material) without the approval of the University.

#### ARTICLE VI - PAYMENTS

##### A - Payments on Account of Allowable Costs

(1) Once each month (or at more frequent intervals, if approved by the University) the Subcontractor will submit to the University, in such form and reasonable detail as the University may require, an invoice or voucher supported by a statement of costs incurred by the Subcontractor in the performance of this Subcontract and claimed to constitute allowable cost. Promptly after receipt of each invoice or voucher, the University shall, subject to the provisions of B below, make payments thereon as approved by the University.

(2) Eighty-five (85) percent of the fixed fee, if any, shall become due and payable in monthly installments in amounts based on the proportion of the work then completed, as determined by the University, and the balance upon completion and acceptance of all work under this Subcontract; provided however, that the University may at any time that the amount of the retained fixed fee equals fifteen (15) percent of the total fixed fee or if the amount retained should be in excess of \$100,000.00 make payments of any of the remaining periodic installments of the fixed fee, in full.

##### B - Audit Adjustments

At any time or times prior to settlement under this Subcontract the University may have invoices or vouchers and statements of costs audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the University, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

##### C - Final Payment

A closing financial statement shall be submitted by the Subcontractor promptly following completion of the work under this Subcontract

and in no event later than one year (unless University grants a further specific period of time) from the date of completion.

Upon completion of the work, its acceptance by the University, furnishing by the Subcontractor of a closing financial statement, and completion of a final audit by the Commission, providing the Subcontractor has complied with all the provisions of this Subcontract, (including, without limitation, the accounting for Government-owned property required by ARTICLE XI - PROPERTY and disclosures, if any, of information called for under ARTICLE XIV - PATENTS and ARTICLE XV - COPYRIGHTS), and the provisions of Paragraphs D and E below, the University shall promptly pay the Subcontractor the unpaid balance of reimbursable costs and any part of the fixed fee which has been withheld pursuant to Paragraph A above or otherwise not paid to the Subcontractor.

In arriving at the amount due the Subcontractor under this ARTICLE VI, there shall be deducted (1) all unliquidated payments on account theretofore made to the Subcontractor, (2) any claim which the University or the Government may have against the Subcontractor in connection with this Subcontract and, (3) deductions due to the termination of this Subcontract and not otherwise recovered by or credited to the University or the Government.

#### D - Applicable Credits

The Subcontractor agrees that any refunds, rebates, credits or other amounts, (including any interest thereon), accruing to or received by the Subcontractor or any assignee under this Subcontract shall be paid by the Subcontractor to the University, to the extent that they are properly allocable to costs for which the Subcontractor has been reimbursed by the University under this Subcontract. Reasonable expenses incurred by the Subcontractor for the purpose of securing such refunds, rebates, credits or other amounts shall be allowable costs hereunder when approved by the University.

#### E - Financial Settlement

Prior to final payment under this Subcontract, the Subcontractor and each assignee under this Subcontract whose assignment is in effect at the time of final payment under this Subcontract shall execute and deliver:

1. An assignment in form and substance satisfactory to the University, of refunds, rebates, credits, or other amounts, (including any interest thereon), properly allocable to costs for which the Subcontractor has been reimbursed by the University under this Subcontract.

2. A release in such form and with such exceptions as may be approved by the University, discharging the University and the Government, their officers, agents, and employees, from all liabilities, obligations and claims arising out of or under this Subcontract subject only to the following exceptions:

- a. specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Subcontractor,

b. claims, together with reasonable expenses incidental thereto, based upon liabilities of the Subcontractor to third parties arising out of performance of this Subcontract; provided that such claims are not known to the Subcontractor on the date of the execution of the release; and provided further that the Subcontractor gives notice of such claims in writing to the University not more than three (3) years after the date of the release or the date of any notice to the Subcontractor that the University is prepared to make final payment, whichever is earlier,

c. claims for reimbursement of costs, (other than expenses of the Subcontractor by reason of any indemnification of the University against patent liability), including reasonable expenses incidental thereto, incurred by the Subcontractor under the provisions of the Subcontract relating to patents.

#### F - Claims

Claims for payment shall be accompanied by such supporting documents and justification as the University shall require.

### ARTICLE VII - CHANGES

#### A - Changes and Adjustment of Fee

The Business Manager or his designee may at any time and without notice to the sureties, if any, issue written directions requiring additional work within the general scope of this Subcontract or directing the omission of or variation in work covered by this Subcontract. If any such direction results in a material change in the amount or character of the work described in ARTICLE I - SCOPE OF WORK, the parties shall mutually agree to an equitable adjustment of the fixed fee and this Subcontract shall be modified in writing accordingly.

Any claim by the Subcontractor for an adjustment under this ARTICLE VII must be asserted in writing within sixty (60) days from the date of receipt by the Subcontractor of the notification of change, unless the University within said sixty (60) days, grants a further period of time for asserting the claim. A failure to agree on an equitable adjustment under this ARTICLE VII shall be deemed to be a dispute within the meaning of ARTICLE XX - DISPUTES.

#### B - Work to continue

Nothing contained in this ARTICLE VII shall excuse the Subcontractor from proceeding with the work under this Subcontract in accordance with the requirements of any changes directed hereunder.

ARTICLE VIII - ACCOUNTS AND RECORDS

A - Accounts

The Subcontractor shall maintain 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 disposition of all University furnished Government Property coming into the possession of the Subcontractor under this Subcontract. The system of accounts employed by the Subcontractor shall be satisfactory to the Commission and in accordance with generally accepted accounting principles consistently applied.

B - Inspection and Audit of Accounts and Records

All books of account and records relating to this Subcontract shall be subject to inspection and audit by the University and the Commission at all reasonable times before and during the period of retention provided for in Paragraph D below, and the Subcontractor shall afford the University and the Commission proper facilities for such inspection and audit.

C - Audit of Subcontractor's Records

The Subcontractor 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 University and Commission or to have such audit conducted by the next higher tier subcontractor, unless the University elects to waive such audit or approve other arrangements for conduct of the audit.

D - Disposition of Records

Except as agreed upon by the University with the approval of the Commission, 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 Subcontract in the possession of the Subcontractor relating to this Subcontract shall be preserved by the Subcontractor for a period of six (6) years after final settlement of the Subcontract or otherwise disposed of in such manner as may be agreed upon by the University with the approval of the Commission.

E - Reports

The Subcontractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this Subcontract as the University may from time to time require, and in addition shall also furnish such monthly progress reports and a final report in such form and numbers of copies and to such addresses as and when directed in APPENDIX B - SCOPE OF WORK.

F - Subcontracts

The Subcontractor shall include provisions similar to those contained in this ARTICLE VIII in any subcontract issued under this Subcontract, of any tier (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.

ARTICLE IX - EXAMINATION OF RECORDS

A - The Subcontractor agrees that the Commission and the Comptroller General of the United States or any of their duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Subcontractor involving transactions related to this Subcontract until the expiration of three (3) years after final payment under this Subcontract, unless the Commission authorizes their prior disposition.

B - The Subcontractor further agrees to include in all its 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 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 until the expiration of three (3) years after final payment under this Subcontract, unless the Commission authorizes their prior disposition. The term "subcontract" as used in this ARTICLE IX excludes (1) purchase orders not exceeding \$2,500.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

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

ARTICLE X - LIABILITY

In the conduct of work under this Subcontract, the Subcontractor is acting in the capacity of an independent contractor; and neither party shall by reason of this Subcontract be obligated to defend, assume the cost of defense, hold harmless or indemnify the other from any liability to third parties for loss of or damage to property, death, or bodily injury, arising out of or connected with the work under this Subcontract, except as provided in ARTICLE XIV - PATENTS, ARTICLE XXVII - LITIGATION AND CLAIMS, and ARTICLE XXIX - TAXES. This ARTICLE X shall have no application to public liability as defined in the Atomic Energy Act of 1954, as amended, to the extent Subcontractor is indemnified under said law.

ARTICLE XI - PROPERTY

A - Furnishing of Government Property

The University reserves the right to furnish any property or services available to the University required for the performance of the work under this Subcontract.

B - Title to Property

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

C - Identification

To the extent directed by the University, the Subcontractor shall identify Government Property coming into the Subcontractor's possession or custody by marking or segregating in such a way, satisfactory to the University, as shall indicate its ownership by the Government.

D - Disposition

The Subcontractor shall make such disposition of Government Property which has come into the possession or custody of the Subcontractor under this Subcontract as the University shall direct. When authorized in writing by the University during the progress of the work or upon completion or termination of this Subcontract, the Subcontractor may, upon such terms and conditions as the University may approve, sell or exchange such property or acquire such property at a price agreed upon by the University and the Subcontractor as the fair value thereof. The amount received by the Subcontractor as the result of any disposition or the amount of the agreed fair value of any such property acquired by the Subcontractor shall be applied in reduction of costs allowable under this Subcontract or shall be otherwise credited to account of the University, as the University may direct. Upon completion of the work or the termination of this Subcontract, the Subcontractor shall render an accounting, as prescribed by the University, of all Government Property which has come into the possession or custody of the Subcontractor under this Subcontract.

E - Protection of Government Property - Classified Materials

The Subcontractor shall take all reasonable precautions as directed by the University, or in the absence of such directions, in accordance with sound industrial practice, to safeguard and protect Government Property in the Subcontractor's possession or custody. Special measures shall be taken by the Subcontractor in the protection of and accounting for any classified or special materials involved in the performance of this Subcontract in accordance with the regulations and requirements of the Commission.

F - Risk of Loss of Government Property

The Subcontractor shall not be liable for loss or destruction of or damage to Government Property in the Subcontractor's possession, unless such loss, destruction or damage results from wilful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel or unless such loss, destruction or damage results from a failure on the part of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written directives of the University to safeguard such property under Paragraph E hereof. The term "Subcontractor's managerial personnel" as used herein means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (1) all or substantially all of the Subcontractor's business, (2) all or substantially all of the Subcontractor's operation at any one plant or separate location at which this Subcontract is being performed, (3) a separate and complete major industrial operation in connection with the performance of this Subcontract, or (4) a separate and complete major construction, alteration or repair operation in connection with performance of this Subcontract.

G - Steps to be Taken in Event of Loss

Upon the happening of any loss or destruction of or damage to Government Property in the possession or custody of the Subcontractor, the Subcontractor shall immediately inform the University of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or damaged property, if and as directed by the University, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the University and/or Government on request all reasonable assistance in obtaining recovery.

H - Government Property for Government Use Only

Government Property shall be used only for the performance of this Subcontract, provided however, nothing contained herein shall be construed to preclude any proper written agreement between the parties approved by the Commission with reference to the use of the Government Property furnished hereunder.

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## ARTICLE XII - CONTRIBUTIONS AND ASSIGNMENT

### A - Contributions

The Subcontractor shall accept exclusive liability for payment of any contributions measured by the wages of employees of the Subcontractor and its agents assessed by the Federal Unemployment Tax Act, the Federal Insurance Contributions Act and any other applicable laws or statutes and shall indemnify and hold harmless the University and the Government on account thereof.

### B - Assignment

The Subcontractor shall have no right, authority or power to sell, mortgage or assign this Subcontract or any interest herein nor any right, power or authority to allow or permit any other person or persons or organizations to have any interest in or use any part of the rights or obligations granted hereunder for any purposes whatsoever without the prior written consent of the University. Neither this Subcontract nor any interest created thereby shall pass by operation of law to any trustee or receiver in bankruptcy or to any other receiver or assignee for the benefit of creditors or any other person or otherwise. The Subcontractor shall not assign or transfer this Subcontract, any portion hereof, any interest herein, or any claim hereunder to any other party or parties, except as expressly authorized by the University. The University may assign this Subcontract to the Government.

## ARTICLE XIII - INSURANCE

### A - Bonds and Insurance

The Subcontractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the University and with companies, underwriters or underwriting firms under forms of policies subject to the University review and approval at the option of the University. The terms of any such bond or insurance policy shall be submitted upon request for University approval. In view of the provisions of ARTICLE XI - PROPERTY, the Subcontractor will not be reimbursed for any insurance (including self-insurance or reserves) covering loss or destruction of, or damage to, Government-owned property.

### B - Workmen's Compensation

In furtherance of the provisions of Paragraph A above, the Subcontractor shall at all times maintain during the performance of the work under this Subcontract, Workmen's Compensation Insurance which will compensate up to the maximum benefits as required by the applicable Workmen's Compensation Laws.

ARTICLE XIV - PATENTS

A - Whenever any invention or discovery is made or conceived by the Subcontractor or its employees in the course of, or under this Subcontract, the Subcontractor 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. The judgment of the Commission on these matters shall be accepted as final; and the Subcontractor, for itself and for its employees, agrees that the inventor or inventors will execute all documents and do all things necessary or proper to carry out the judgment of the Commission.

B - No claim for pecuniary award or compensation under the provisions of the Atomic Energy Acts of 1946 and 1954 shall be asserted by the Subcontractor or its employees with respect to any invention or discovery made or conceived in the course of, or under this Subcontract.

C - Except as otherwise authorized in writing by the Commission, the Subcontractor will obtain patent agreements to effectuate the purposes of Paragraphs A and B of this ARTICLE XIV from all persons who perform any part of the work under this Subcontract, except such clerical and manual labor personnel as will not have access to technical data.

D - Except as otherwise authorized in writing by the Commission, the Subcontractor will insert in all sub-subcontracts provisions making Paragraphs A through D of this ARTICLE XIV applicable to the sub-subcontractor and its employees.

E - In addition to the rights of the parties under the foregoing paragraphs in and to inventions or discoveries made or conceived in the course of or under this Subcontract, the Subcontractor agrees, and does hereby grant to the Government an irrevocable, non-exclusive, paid-up license in and to any inventions or discoveries actually reduced to practice or patented before the effective date of the Subcontract, owned or controlled by the Subcontractor and in and to any inventions or discoveries actually reduced to practice or acquired during the subcontract period but not subject to the foregoing foreground invention rights provision which shall be utilized or embodied in the work under this Subcontract; (1) to make, use, and to have made and used throughout the world for U. S. Government purposes, and (2) to sell and have sold such articles, material or product embodying said invention or discovery as surplus or condemned public property as provided by law. The acceptance or exercise by the Government of the aforesaid rights and license shall not prevent the Government at any time from contesting the enforceability, validity or scope of, or the title to, any rights or patents herein licensed.

ARTICLE XV - COPYRIGHTS

A - The Subcontractor, (1) agrees that the Commission shall determine the disposition of the title to and the rights under any copyright secured by the Subcontractor or its employees on copyrightable material first produced or composed and delivered to the Government under this Subcontract, and (2) hereby grants to the Government a royalty-free, non-exclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted or copyrightable work not first produced or composed by the Subcontractor in the performance of this Subcontract, but which is incorporated in the material furnished under this Subcontract, provided that such license shall be only to the extent the Subcontractor now has or prior to the completion or final settlement of the Subcontract may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

B - The Subcontractor agrees that it will not knowingly include any copyrighted materials in any written or copyrightable material furnished or delivered under this Subcontract without a license as provided in A above, or without the consent of the copyright owner, unless specific written approval of the Commission to the inclusion of such copyrighted material is obtained. Requests for such approval shall be directed to the University.

C - The Subcontractor agrees to report in writing to the University promptly and in reasonable detail any notice or claim of copyright infringement received by the Subcontractor with respect to any material delivered under this Subcontract.

ARTICLE XVI - DRAWINGS, DESIGNS, SPECIFICATIONS AND RELEASE OF INFORMATION

A - Drawings, Designs and Specifications

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, 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, shall be subject to inspection by the University and the Commission at all reasonable times; and the Subcontractor and its subcontractors shall afford the University and Commission proper facilities for such inspection; and, further 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 Subcontractor and its subcontractors and vendors for additional compensation and shall be subject to the Subcontractor's right to retain a copy of said material where not classified, for its own use (such retention and use subject to the patent and security provisions of this Subcontract) and shall be delivered to the University or otherwise disposed of by the Subcontractor, either as the University may from time to time direct during the progress of the work, or, in any event, as the University shall direct upon completion or termination of this Subcontract.

B - Release of Information

Publications, news releases, advertising, speeches, technical papers, usage of photographs, releases of information regarding this undertaking or data developed hereunder may not be made except upon prior written approval from the Business Manager, or his designee.

ARTICLE XVII - SECURITY

A - The Subcontractor's Duty to Safeguard Restricted Data and Other Classified Information

In the performance of the work under this Subcontract, the Subcontractor 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 Subcontractor's possession in connection with performance of work under this Subcontract. Except as otherwise expressly instructed by the University or the Commission, the Subcontractor shall upon completion or termination of this Subcontract transmit to the University any classified matter in the possession of the Subcontractor or any person under the Subcontractor's control in connection with performance of this Subcontract.

B - Regulations

The Subcontractor agrees to conform to all security regulations and requirements of the Commission.

C - Definition of Restricted Data

The term "Restricted Data", as used in this ARTICLE XVII, means all data concerning: (1) design, manufacture, or utilization of atomic weapons, (2) the production of special nuclear material, or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954.

D - Security Clearance of Personnel

The Subcontractor shall not permit any individual to have access to Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements.

E - 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 Subcontractor or any person under the Subcontractor's control in connection with work under this Subcontract may subject the Subcontractor, its agents, employees, and subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, 68 Stat. 919). (See also Executive Order No. 10104 of February 1, 1950, 15 F. R. 597).

F - Classification

In the performance of the work under this Subcontract, the Subcontractor shall assign classifications to all documents, material and equipment originated or generated by the Subcontractor in accordance with classification guidance furnished to the Subcontractor by the Commission and the University. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material or equipment, shall include a provision to the effect that in the performance of such subcontract or purchase order the subcontractor or supplier shall assign classifications to all such documents, material, and equipment in accordance with classification guidance furnished to such subcontractor or supplier by the Subcontractor.

G - Subcontracts and Purchase Orders

Except as otherwise authorized by the University in writing, the Subcontractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this Subcontract.

ARTICLE XVIII - TERMINATION

A - The performance of work under this Subcontract may be terminated by the University in accordance with this ARTICLE XVIII in whole, or from time to time in part, 1) whenever the Subcontractor shall default in performance of this Subcontract in accordance with its terms (including in the term "default" any such failure by the Subcontractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days, (or such longer period as the Business Manager may allow) after receipt from the Business Manager of a notice specifying the default; or 2) whenever for any reason the Business Manager shall determine that such termination is in the best interests of the University. Any such termination shall be effected by delivery to the Subcontractor of a Notice of Termination specifying whether termination is for the default of the Subcontractor or for the convenience of the University, the extent to which performance of work under the Subcontract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this Subcontract for default under (1) above, it is determined that the Subcontractor'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 Subcontractor including, but not restricted to acts of God or the public enemy, acts of the University, acts of another Subcontractor in the performance of an agreement from the University, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays of other subcontractors due to any of such causes unless the Business Manager shall determine that the supplies or services to be furnished by other subcontractors were obtainable from other sources in sufficient time to permit the Subcontractor to meet the required delivery schedule, a notice of termination shall be deemed to have been issued under (2) above and the rights and obligations of the parties hereto shall, in such event, be governed accordingly.

B - After receipt of a Notice of Termination and except as otherwise directed by the Business Manager of the University, the Subcontractor shall 1) stop work under the Subcontract on the date and to the extent specified in the Notice of Termination; 2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Subcontract as is not terminated; 3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; 4) assign to the University, in the manner and to the extent directed by the Business Manager, all of the rights, title, and interest of the Subcontractor under the orders or other subcontracts so terminated in which case the University shall have the right in its discretion to settle or pay any or all claims arising out of the termination of such orders and subcontracts; 5) with the approval or ratification of the Business Manager, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this article, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or in part, in accordance with the provisions of this Subcontract; 6) transfer title (to the extent that title has not already been transferred) and in the manner, to the extent and at the times directed by the Business Manager, delivery to the University (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work

terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if the Subcontract had been completed, would be required to be furnished to the University, and (iii) the jigs, dies, and fixtures, and other special tools, and tooling acquired or manufactured for the performance of this Subcontract for the cost of which the Subcontractor has been or will be reimbursed under this Subcontract; 7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Business Manager, any property of the types referred to in provision (6) of this paragraph; provided, however, that the Subcontractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at the price or prices approved by the Business Manager; and provided, further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the University to the Subcontractor under this Subcontract or shall otherwise be credited to the price or cost of the work covered by this Subcontract or paid in such other manner as the Business Manager may direct; 8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and 9) take such action as may be necessary, or as the Business Manager may direct, for the protection and preservation of the property related to this contract which is in the possession of the Subcontractor and in which the University has or may acquire an interest. The Subcontractor 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 reimbursable cost under this article.

At any time after expiration of the plant clearance period (See AEC Manual Chapter 9112 for definition), the Subcontractor may submit to the Business Manager a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Business Manager, and may request the University to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the University will accept title to such items and remove them or enter into a storage agreement covering the same, provided that the lists submitted shall be subject to verification by the Business Manager upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

C - After receipt of a Notice of Termination, the Subcontractor shall continue to submit cost vouchers for costs reimbursable under the Subcontract and shall submit to the Business Manager, in the form and with the certification prescribed by the Business Manager, a proposal for adjustment of the fixed fee by reason of the termination. Such proposal shall be submitted promptly but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by the Business Manager upon request of the Subcontractor made in writing within such six-month period or authorized extension thereof. However, if the Business Manager determines that the facts justify such action, he may review and act upon any such proposal at any time after such six-month period or any extension thereof. Upon failure of the Subcontractor to submit its proposal within the time allowed, the Business Manager may determine, on the basis of information available to him, the amount of fee, if any, due to the Subcontractor by reason of the termination and shall thereupon pay to the Subcontractor the amount so determined.

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D - In the event of the termination of performance of work under this Subcontract, full and complete settlement of all claims of the Subcontractor with respect to the terminated work shall include the following:

(1) All costs and expenses reimbursable in accordance with this Subcontract, not previously paid to the Subcontractor, for the performance of this Subcontract prior to the effective date of the Notice of Termination and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by, the Business Manager, provided, however, that the Subcontractor shall proceed as rapidly as practicable to discontinue such costs.

(2) So far as not included under (1) above, the cost of paying and settling claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (B) (5) above, which are properly chargeable to the terminated portion of the Subcontract.

(3) 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 Subcontract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; provided, however, that if the termination is for default of the Subcontractor there shall not be included any amounts for the preparation of the Subcontractor's settlement proposal.

(4) A portion of the fixed fee payable under the Subcontract, determined as follows:

(a) In the event of the termination of this Subcontract for the convenience of the University and not for the default of the Subcontractor, a percentage of the fee equivalent to the percentage of the completion of work contemplated by the Subcontract, less fixed fee payments previously made hereunder.

(b) In the event of the termination of this Subcontract for the default of the Subcontractor, such proportionate part of the fee (or, if this contract calls for articles of different types of such part of the fee as is reasonably allocable to the type of articles under consideration) as the total number of articles delivered to and accepted by the University bears to the total number of articles of a like kind called for by this Subcontract. The amount so determined shall be reduced by the amount of fixed fee payments previously made.

Subject to the provisions of paragraph C, the Subcontractor and the Business Manager may agree upon the reduced amount to be paid the Subcontractor as the allowance for fixed fee by reason of the total or par-

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tial termination of work pursuant to this article. The Subcontract shall be amended accordingly.

If the amount determined under this paragraph is less than the total payment of fixed fee theretofore made to the Subcontractor, the Subcontractor shall repay to the University the excess amount.

The Subcontractor shall have the right of appeal, under the article of this Subcontract entitled "Disputes" from any fee determination made by the Business Manager under this paragraph, except that if the Subcontractor has failed to submit its proposal for fee adjustment within the time provided in paragraph (C) above and has failed to request extension of such time, he shall have no such right of appeal. In any case, where the Business Manager has made a determination of the amount due as the allowance for fee, the University shall pay to the Subcontractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Business Manager, or (2) if an appeal has been taken, the amount finally determined on such appeal.

E - In arriving at the amount due the Subcontractor under this article there shall be deducted 1) all unliquidated advance or other unliquidated payments theretofore made to the Subcontractor, 2) any claim which the University may have against the Subcontractor in connection with this Subcontract, including any claim for damages by reason of default, and 3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Subcontractor or sold pursuant to the provisions of this article not otherwise recovered by or credited to the University.

F - In the event of a partial termination, the portion of the fixed fee which is payable with respect to the work under the continued portion of the Subcontract shall be equitably adjusted by agreement between the Subcontractor and the Business Manager, and such adjustment shall be evidenced by an amendment to this Subcontract.

G - The provisions of this article relating to the fixed fee shall be inapplicable if this Subcontract does not provide for payment of a fixed fee.

H - Unless otherwise provided for in this Subcontract, or by applicable statute, the Subcontractor from the effective date of termination and for a period of six years after final settlement under this Subcontract shall preserve and make available to the University at all reasonable times at the office of the Subcontractor, but without direct charge to the University, all its books, records, documents, and other evidence bearing on the cost and expenses of the Subcontractor under this Subcontract and relating to the work terminated hereunder or, to the extent approved by the Business Manager, photographs, microphotographs, or other authentic reproductions thereof.

23:00

ARTICLE XIX - LABOR PROVISIONS

A - Work Hours Act of 1962

This Subcontract, to the extent that it is of a character specified in the Work Hours Act of 1962 (Public Law 87-581, 76 Stat. 357-360) and is not covered by the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and to all other provisions and exceptions of said Work Hours Act of 1962.

1. Neither the Subcontractor nor any subcontractor or vendor contracting for any part of the Subcontract work shall require or permit any laborer or mechanic to be employed on such work in excess of eight hours in any calendar day or in excess of forty hours in any workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

2. In the event of any violation of the provisions of paragraph 1, the Subcontractor and any subcontractor or vendor responsible for such violation shall be liable to any affected employee for his unpaid wages. In addition, the Subcontractor or subcontractor or vendor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph 1, in the sum of \$10.00 for each calendar day on which such employee was required or permitted to work in excess of eight hours or in excess of forty hours in a workweek without payment of the required overtime wages.

3. The University or Government may withhold, or cause to be withheld, from any moneys payable on account of work performed by the Subcontractor, or subcontractor or vendor, the full amount of wages required by this Subcontract and such sums as may administratively be determined to be necessary to satisfy any liabilities of Subcontractor or subcontractor or vendor, for liquidated damages as provided in paragraph 2.

4. The Subcontractor agrees to insert the foregoing paragraphs 1, 2, 3, and this paragraph 4 in all subcontracts or purchase orders.

B - Notice of Labor Disputes

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

C - Non-Discrimination

(The following clause is applicable unless this Subcontract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity issued pursuant to Executive Order No. 10925 of March 6, 1961, as amended (26 F. R. 1977) ).

During the performance of this Subcontract, Subcontractor agrees as follows:

1. Subcontractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Subcontractor 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 Subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Government setting forth the provisions of this Paragraph C.

2. The Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed or national origin.

3. The Subcontractor 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 University or Government, advising the said labor union or workers' representative of the Subcontractor's commitments under this Paragraph C, and shall post copies of the Notice in conspicuous places available to employees and applicants for employment.

4. The Subcontractor will comply with all provisions of Executive Order 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

5. The Subcontractor will furnish all information and reports required by Executive Order 10925 of March 6, 1961, as amended, and by the rules, regulations and orders of the said Committee, or pursuant thereto, and will permit access to his books, records and accounts by Commission and the Committee for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the Subcontractor's non-compliance with the non-discrimination clause of this Subcontract or with any of the said rules, regulations, or orders, this Subcontract may be cancelled, terminated, or suspended, in whole or in part and the Subcontractor may be declared ineligible for Government contracts in accordance with procedures authorized in Executive Order 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies evoked as provided in the said Executive Order or by rules, regulations, or orders of The President's Committee on Equal Employment Opportunities, or as otherwise provided by law.

7. The Subcontractor will include the provisions of Paragraphs 1 through 7 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, as amended, so that such provisions will be binding upon each subcontractor or vendor. Subcontractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provision, including sanctions for non-compliance: Provided, however, that in the event Subcontractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Government, Subcontractor may request the United States to enter into such litigation to protect the interests of the United States.

#### D - Convict Labor

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

ARTICLE XX - DISPUTES

A - Except as otherwise provided in this Subcontract, any dispute concerning a question of fact arising under this Subcontract which is not disposed of by agreement shall be decided by a representative of the Commission authorized to supervise and administer performance of the University's contract with the Government, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the parties to this Subcontract. Within thirty (30) days from the date of receipt of such copy, Subcontractor may appeal by mailing or otherwise furnishing to the aforesaid Commission representative a written appeal addressed to the Commission. The decision of the Commission or its duly authorized representative for the determination of such appeals other than the aforesaid Commission representative, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious or so grossly erroneous as to necessarily imply bad faith or not supported by substantial evidence: Provided, that if no such appeal to the Commission is taken, the decision of the aforesaid Commission representative shall be final and conclusive. In connection with any appeal proceeding under this ARTICLE XX, Subcontractor shall be offered an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Subcontractor shall proceed diligently with the performance of the subcontract and in accordance with the decision of the aforesaid Commission representative. Any sum or sums allowed to the Subcontractor under the provisions of this ARTICLE XX shall be paid by University as part of the cost of the work herein contracted for and shall be deemed to be within the contemplation of this Subcontract and in accordance with said decision.

B - This ARTICLE XX does not preclude consideration of law questions in connection with decisions provided for in Paragraph A above: Provided, that nothing in this Subcontract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

ARTICLE XXI - COVENANT AGAINST CONTINGENT FEES

A - Warranty - Termination or Deduction for Breach

The Subcontractor warrants that no person or selling agency has been employed or retained to solicit or secure this Subcontract 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 Subcontractor for the purpose of securing business. For breach or violation of this warranty the University shall have the right to annul this Subcontract without liability or, in its discretion, to deduct from the Subcontract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

B - Subcontracts and Purchase Orders

Unless otherwise authorized by the University in writing, the Subcontractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this Subcontract.

ARTICLE XXII - OFFICIALS NOT TO BENEFIT

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

ARTICLE XXIII - NOTICE

If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances whatsoever which may jeopardize its fulfillment of the agreed performance of all or any portion of the Subcontract, it shall immediately notify the Business Manager at the University of California Lawrence Radiation Laboratory, Berkeley 4, California, or his designee, in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

ARTICLE XXIV - RENEGOTIATION

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

A - This Subcontract is subject to the Renegotiation Act of 1951, as amended, (P.L. 9, 82nd Cong., 65 Stat. 7; P.L. 764, 83rd 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.

B - The Subcontractor agrees to insert the provisions of this ARTICLE XXIV including this Paragraph B, in all subcontracts, as that term is defined in Section 103 (g) of the Renegotiation Act of 1951.

ARTICLE XXV - WALSH-HEALEY PUBLIC CONTRACTS ACT

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

ARTICLE XXVI - BUY AMERICAN ACT

A - In acquiring end products, the Buy American Act (41 U. S. Code 10a-d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(1) "Components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(2) "End products" means those articles, materials, and supplies, which are to be acquired under this Subcontract for public use; and

(3) A "Domestic source end product" means (i) an unmanufactured end product which has been mined or produced in the United States and (ii) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the costs of all its components. For the purposes of this A 3 (ii), components of foreign origin of the same type or kind as the products referred to in B 2 or 3 of this clause shall be treated as components mined, produced, or manufactured in the United States.

B - The Subcontractor agrees that there will be used under this Subcontract (by subcontractors, materialmen, and suppliers) only domestic source end products, except end products:

(1) Which are for use outside the United States;

(2) Which the Government determines are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(3) As to which the Commission determines the domestic preference to be inconsistent with the public interest; or

(4) 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 XXVII - LITIGATION AND CLAIMS

A - Initiation of Litigation

If the University requires the Subcontractor to initiate litigation, including proceedings before administrative agencies, in connection with this Subcontract, the Subcontractor shall proceed with the litigation in good faith as directed from time to time by the University.

B - Defense and Settlement of Claims

The Subcontractor shall give the University immediate notice in writing of (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract, and (2) any claim against the Subcontractor, the cost and expense of which is allowable under APPENDIX A - REIMBURSEMENT OF COSTS. Except as otherwise directed by the University in writing, the Subcontractor shall furnish immediately to the University copies of all pertinent papers received by the Subcontractor with respect to such action or claim. To the extent not in conflict with any applicable policy of insurance, the Subcontractor may with the University's approval settle any such action or claim, shall effect at the University's request an assignment and subrogation in favor of the Commission of all the Subcontractor's rights and claims (except those against the University) arising out of any such action or claim against the Subcontractor; and, if required by the University, shall authorize representatives of the University or Government to settle or defend any such action or claim and to represent the Subcontractor in or to take charge of any action. If the settlement or defense of an action or claim against the Subcontractor is undertaken by the University or Government the Subcontractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the Subcontractor is not covered by a policy of insurance the Subcontractor shall with the approval of the University proceed with the defense of the action in good faith, and in such event the defense of the action shall be an allowable expense hereunder provided, however, that such expense shall not be allowable to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the University, but which the Subcontractor failed to secure through its own fault or negligence.

ARTICLE XXVIII - SAFETY, HEALTH AND FIRE PROTECTION

The Subcontractor shall take all reasonable precautions in the performance of the work under this Subcontract 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 University and the Commission. In the event that the Subcontractor fails to comply with said regulations or requirements of the University and the Commission, the University may without prejudice to any other legal or contractual rights of the University 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 University. The Subcontractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

ARTICLE XXIX - TAXES

The Subcontractor agrees to notify the University of any tax, fee or charge from which exemption is granted by State or local law or which is invalid under any provisions of the Constitution of the United States levied or purported to be levied on the Subcontractor in respect of this Subcontract and to refrain from paying any such tax, fee, or charge unless otherwise authorized by the University. The Subcontractor further agrees to take such steps as may be required by the University to cause such tax, fee, or charge to be paid under protest, and if so directed by the University, to cause to be assigned to the Commission or its designee any and all rights to the abatement or refund of any such tax, fee, or charge, or to permit the University or the Commission to join with the Subcontractor in any proceedings for the recovery thereof or to sue for recovery in the Subcontractor's name. The Government shall save the Subcontractor harmless from penalties and interest incurred through compliance with this ARTICLE XXIX.

ARTICLE XXX - PERMITS

The Subcontractor 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 Subcontract is performed.

ARTICLE XXXI - UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

It is recognized that 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 efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Subcontractor agrees to use its best efforts to place its subcontracts in accordance with this policy. In complying with the foregoing, and with ARTICLE XXXII - UTILIZATION OF SMALL BUSINESS CONCERNS, the Subcontractor, in placing its 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 XXXII - UTILIZATION OF SMALL BUSINESS CONCERNS

A - It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

B - The Subcontractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Subcontractor finds to be consistent with the efficient performance of this Subcontract.

CONFIRMED COPY

IN WITNESS WHEREOF, the parties hereto have executed this Subcontract.

UNIVERSITY OF CALIFORNIA

BY (S) C. L. BLUE  
C. L. BLUE

TITLE Procurement Manager, Lawrence Radiation Laboratory

DATE JANUARY 21, 1964

SUBCONTRACTOR

SAN FERNANDO LABORATORIES

BY (S) ROBERT A HOLZL

TITLE PRESIDENT

DATE FEBRUARY 24, 1964

CONFIRMED COPY

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# CONFORMED COPY

## REIMBURSEMENT OF COSTS

APPENDIX A TO PURCHASE ORDER 8445605

between

**THE UNIVERSITY OF CALIFORNIA LAWRENCE RADIATION LABORATORY**

and

**SAN FERNANDO LABORATORIES**

### INTRODUCTION

The allowable cost of performing the work under this Subcontract shall be the costs and expenses (less applicable income and other credits) that are actually incurred by the Subcontractor, are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the subcontract work in accordance with its terms and are determined to be allowable pursuant to this paragraph. The determination of the allowability of cost hereunder shall be based on: (1) reasonableness, including the exercise of prudent business judgment; (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the subcontract work; and (3) recognition of all exclusions and limitations set forth in this APPENDIX A, or elsewhere in this Subcontract as to types or amounts of items of cost. Allowable cost shall not include cost of any item described as unallowable in Paragraph B of this APPENDIX A except as indicated therein. Failure to mention an item of cost specifically in Paragraph A or Paragraph B shall not imply either that it is allowable or that it is unallowable.

### A - EXAMPLES OF ITEMS OF ALLOWABLE COST

Subject to other provisions of this Subcontract, the following examples of items of cost of work under this Subcontract shall be allowable to the extent indicated:

1. Bonds and insurance (including self-insurance) as provided in ARTICLE XIII - INSURANCE.
2. Communication costs including telephone services, local and long distance telephone calls, teletypes, telegrams, cablegrams, radiograms, postage and similar items.
3. Consulting services (including legal and accounting), and related expenses, as approved by the University, except as made unallowable by Paragraph B-24.
4. Litigation expenses, including reasonable counsel fees, incurred in accordance with ARTICLE XXVII - LITIGATION AND CLAIMS.

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5. Losses and expenses (including settlements made with the approval of the University and the Commission) sustained by the Subcontractor in the performance of this Subcontract and certified in writing by the University to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this Subcontract.

6. Materials and supplies (including those withdrawn from common stores costed in accordance with any generally recognized method that is consistently applied by the Subcontractor and productive of equitable results), equipment and services including freight, transportation, material handling, inspection, storage, salvage and other expenses incident to the procurement and use thereof and delivery as required to the University, all subject to the approvals required under any other provision of this Subcontract.

7. Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions of this Subcontract or as approved by the University; and preparation of invention disclosures, reports, and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with ARTICLE XIV - PATENTS - of this Subcontract.

8. Personnel costs and related expenses incurred in accordance with the Subcontractor's established personnel policies and programs applicable on a company-wide basis throughout the Subcontractor's private operations, by collective bargaining contracts, or by custom in the industry or area, as approved by the University, such as:

a. salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday and other premium pay for time worked; nonwork time including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, negotiating agreements with the Subcontractor, or serving on labor-management (Subcontractor) committees: Provided, however, That prior University approval is required in each instance of total compensation to an individual employee at an annual rate of \$20,000 or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under AEC and other Government cost-type contracts. Total compensation, as used here, includes only the employee's base salary and bonus and incentive compensation payments. Work by any person or group of persons in excess of forty-eight (48) hours in any one week shall require written approval of the University; and, establishment of a regular work week in excess of forty (40) hours shall require the written approval of the University;

b. legally required contributions to old age and survivors' insurance, unemployment compensation plans and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

c. travel (except foreign travel which requires specific approval by the University on a case by case basis); incidental subsistence and other allowances of Subcontractor employees, in connection with performance of work under this Subcontract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);

d. employee relations, welfare, morale, etc., programs, including incentive or suggestion awards, employee counseling services, health or first aid clinics and house or employee publications;

e. personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the University on a case by case basis), including apprenticeship training programs designed to improve efficiency and productivity of subcontract operations, to develop needed skills and to develop scientific and technical personnel in specialized fields required in the subcontract work;

f. recruitment of personnel (including help-wanted advertisement), including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the Subcontractor for employment interviews; and,

g. net cost of operating plant-site cafeterias, dining rooms and canteens (attributable to the performance of this Subcontract).

9. Rental and leases of land, buildings, and equipment owned by third parties where such items are used in the performance of the subcontract, except that such rentals and leases directly chargeable to the subcontract shall be subject to approval of the University.

10. Repairs, maintenance, inspection, replacement and disposal (as provided in ARTICLE XI - PROPERTY) of Government-owned property to the extent directed or approved by the University. Subcontractor is hereby directed to perform minor repairs and routine maintenance and inspection of Government-owned property in accordance with sound industrial practice.

11. Repairs, maintenance and inspection of Subcontractor-owned property used in connection with the performance of this Subcontract, including reasonable standby facilities which are due to ordinary wear and tear from use and action of the elements provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent value or appreciably prolong its intended

useful life; and major repairs (including replacement) to such property as directed or approved by the University, when charged directly to the Subcontract.

12. Special tooling, including jigs, dies, fixtures, molds, patterns, designs and drawings, tools and equipment of a specialized nature generally useful to the Subcontractor only in the performance of this Subcontract.

13. Subcontracts, purchase orders and purchases from Subcontractor controlled sources subject to approvals required by other provisions of this Subcontract.

14. Subscriptions to trade, business, technical, and professional periodicals as approved by the University, when charged directly to the Subcontract.

15. Taxes, fees and charges levied by public agencies which the Subcontractor is required by law to pay, except those which are expressly made unallowable under ARTICLE XXIX - TAXES, or under any other provisions of the Subcontract.

16. Utility service including electricity, gas, water, steam, and sewage.

17. Equipment and services necessary to carry out security, health and safety measures under this Subcontract as approved by the University.

18. The costs of preparing bids and proposals to the extent approved by the University, but not to exceed one percent (1%) of the direct material and direct labor costs of the Subcontract work.

19. The cost of independent research and development to the extent approved by the Commission through the University.

20. Items of cost which are not expressly disallowed by any other provisions of this Subcontract and specifically certified in writing by the University as being reasonable and necessary to the performance of work under this Subcontract.

#### B - EXAMPLES OF ITEMS OF UNALLOWABLE COSTS

The following examples of items of cost are unallowable under this Subcontract to the extent indicated:

1. Advertising, except (a) help-wanted advertising and (b) other advertising (such as costs of participation in exhibits) approved by the University as clearly in furtherance of work performed under the Subcontract.

2. Bad debts (including expenses of collection) and provisions for bad debts not arising out of the performance of this Subcontract.

3. Bonuses and similar compensation under any other name, which (a) are not pursuant to an agreement between the Subcontractor and employee prior to the rendering of the services or an established plan consistently followed by the Subcontractor, (b) are in excess of those

costs which are allowable by the Internal Revenue Code and regulations thereunder, or (c) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

4. Commissions, bonuses and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto.

5. Contingency reserve provisions (except provisions for reserves under a self-insurance program to the extent that the type, coverage, rates and premiums would be allowable if commercial insurance were purchased to cover the same risk, as approved by the University).

6. Contributions and donations.

7. Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line, declining balance (using a rate not 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 methods, on the basis of expected useful life to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life. Amortization or depreciation of unrealized appreciation of values of assets or of assets fully amortized or depreciated on the Subcontractor's books of account is unallowable.

8. Dividend provision or payments and, in the case of sole proprietors and partners, distributions of profit.

9. Entertainment costs, except the costs of such recreational activities for on-site employees as may be approved by the University or provided for elsewhere in this Subcontract.

10. Fines and penalties, including assessed interest, resulting from violations of, or failure of the Subcontractor to comply with federal, state, or local laws, or regulations, except when incurred in accordance with written approval of the University or as a result of compliance with the provisions of this Subcontract.

11. Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of the Commission applicable to transfers of such property to the Subcontractor from others.

12. Insurance (including any provision of self-insurance reserve) on any person where the Subcontractor under the insurance policy is the beneficiary directly or indirectly; and insurance against loss of or damage to Government property as defined in ARTICLE XI - PROPERTY.

13. Interest, however represented (except interest incurred in compliance with ARTICLE XXIX - TAXES), bond discounts and expenses, and costs of financing and refinancing operations.

14. Legal, accounting, and consulting services, and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of anti-trust suits, prosecution of claims against the United States or contesting actions or proposed actions of the United States and prosecution or defense of patent infringement litigation.

15. Losses (including litigation expenses, counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts including the Subcontractor's contributed portion under cost-sharing contracts; losses in connection with price reduction to and discount purchases by employees and others from any source; and losses where such losses or expenses:

a. are compensated for by insurance or otherwise, or which would have been compensated by insurance required by law or by written direction of the University but which the Subcontractor failed to procure or maintain through its own fault or negligence, or which could have been covered by permissible insurance in keeping with ordinary business practice but which the Subcontractor failed to secure or maintain;

b. result from wilful misconduct or lack of good faith on the part of any of the Subcontractor's directors, corporate officers, or managerial personnel, as defined in ARTICLE XI - PROPERTY;

c. represent liabilities to third persons for which the Subcontractor has expressly accepted responsibility under other terms of this Subcontract.

16. Maintenance, depreciation, and other costs incidental to the Subcontractor's idle or excess facilities (including machinery and equipment) other than reasonable standby facilities.

17. Membership in trade, business, and professional organizations except as approved by the University.

18. Pre-contract costs, except as expressly allowable under other provisions in this Subcontract.

19. Reconversion, alteration, restoration, or rehabilitation of the Subcontractor's facilities, except as expressly provided for elsewhere in this Subcontract.

20. Independent research and development costs, unless specifically provided for elsewhere in this Subcontract.

21. Selling and distribution activities and related expenses not applicable to the performance of this Subcontract.

22. Storage of records pertaining to this Subcontract after completion of operations under this Subcontract irrespective of contractual or statutory requirements of the preservation of records.

23. 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 ARTICLE XXIX - TAXES; Federal taxes on net income and excess profits; and special assessments on land which represent capital improvements.

24. Salary or other compensation (and expenses related thereto) of any individual employed under this Subcontract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with the Commission, except to the extent that cash payment therefor is required pursuant to the provisions of this Subcontract or procedures of the Commission applicable to the borrowing of such an individual from another cost-type contractor.

C - OVERHEAD

1. Pending final audit and determination of overhead, the Subcontractor shall be paid a provisional overhead rate as approved by the University and the Commission from time to time and authorized in writing by the University. Such provisional payments will be adjusted to the actual overhead costs and expenses determined as set forth in this APPENDIX A and principles herein established.

2. When actual reimbursable overhead costs have been determined pursuant to this Subcontract, adjustment shall be made for the difference between the sum to be determined and the sum of the provisional payments made under Paragraph C (1) above.

ACCEPTED:

SAN FERNANDO LABORATORIES

By (S) ROBERT A HOLZL

Title PRESIDENT

Date FEBRUARY 24, 1964

AUTHORIZED:

THE UNIVERSITY OF CALIFORNIA  
LAWRENCE RADIATION LABORATORY

By (S) C. L. BLUE

Title PROCUREMENT MANAGER

Date JANUARY 21, 1964

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UNIVERSITY OF CALIFORNIA LAWRENCE RADIATION LABORATORY

APPENDIX B TO PURCHASE ORDER 8445605

with

SAN FERNANDO LABORATORIES

## INTRODUCTION

As approved and directed by the University, the Subcontractor will supply approximately twelve (12) man months of technical effort, on a best efforts basis, in the conduct of classified work under the direction of the University Technical Coordinator, Mr. Earl F. Adkins, in the area stated in ADDENDUM NO. 1, which is hereby incorporated into and is a part of this APPENDIX B.

As provided in ARTICLE VII - CHANGES, the Business Manager of the University of California Lawrence Radiation Laboratory may direct in writing changes in this Scope of Work.

## I - ASSIGNMENT OF PERSONNEL

It is understood and agreed that Subcontractor's key technical personnel, assigned to this work, shall not be reassigned or replaced without prior University approval except where such circumstances are beyond the control of the Subcontractor. The Subcontractor shall not assign replacements or substitute any personnel to this work without University approval.

## II - COORDINATION AND ADMINISTRATION

- A - The University's Contract Administrator is Mr. C. L. Blue, his designee or successor.
- B - The University's Technical Coordinator is Mr. Earl F. Adkins, his designee or successor.
- C - The Subcontractor's Technical Director is Mr. Robert L. Holzl, his designee or successor.

## III - REPORTS

The Subcontractor shall supply the University with reports as follows:

### A - Progress Reports

An informal monthly letter report of the progress of each category shall be submitted by the 15th of each month following the prior month's accomplishments.

December 30, 1963

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B - Financial Reports

A financial analysis, reporting the effort expended and costs incurred, shall be submitted monthly.

C - Final Reports

The Subcontractor shall submit a formal final report at the conclusion of each study in a form and format acceptable to the University's Technical Coordinator.

D - Distribution of Reports

1. Mailing Address: University of California  
Lawrence Radiation Laboratory  
Post Office Box 808  
Livermore, California 94551
2. Number of Copies (Separately addressed and mailed)
  - 1 Director's Office, Bldg. 112, Room 1041
  - 1 Procurement Dept., Bldg. 161, Room 1113
  - 4 Technical Information, Bldg. 112, Room 1067
  - 7 Mr. Earl F. Adkins, Bldg. 102, Room 2750

IV - SHIPMENT OF MATERIALS

A - All hazardous or toxic material shipments shall be in conformity with applicable ICC regulations, and in accordance with the rules and regulations of the University and the Commission. The Subcontractor will appropriately label any toxic or hazardous materials for shipment to the University with such shipments addressed as follows:

University of California  
Lawrence Radiation Laboratory  
End of East Avenue  
Livermore, California  
Attention: F. S. Smith, Jr.  
Reference: Purchase Order 8445605

B - Normal materials not included in A above shall be addressed as follows when shipped to the University:

University of California  
Lawrence Radiation Laboratory  
End of East Avenue  
Livermore, California  
Attention: Earl F. Adkins  
Reference: Purchase Order 8445605

C - Subcontractor will dispose of hazardous or toxic materials, scrap and waste as approved and/or directed by the University.

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V - UNIVERSITY-FURNISHED MATERIALS

The University may furnish the Subcontractor small amounts of materials for use in the performance of this development program.

VI - HAZARDOUS MATERIALS

Subcontractor shall establish facilities, necessary systems, and appropriate procedures which shall comply with all AEC requirements relative to health, safety, and accountability requirements involved in this Subcontract.

VII - HEALTH AND SAFETY

The Subcontractor shall assume sole responsibility for control of all hazards to the health and safety of his employees and the general public areas from this effort. The Subcontractor shall comply with all regulations, including those of the Commission, pertaining to the handling of hazardous materials. In addition, the Subcontractor is responsible for adherence to all other applicable health and safety rules and regulations.

ACCEPTED:

SAN FERNANDO LABORATORIES

By (S) ROBERT A HOLZL

Title PRESIDENT

Date FEBRUARY 24, 1964

AUTHORIZED:

THE UNIVERSITY OF CALIFORNIA  
LAWRENCE RADIATION LABORATORY

By (S) C. L. BLUE

C. L. Blue

Title PROCUREMENT MANAGER

Date JANUARY 21, 1964

CONFIDENTIAL COPY

App. B. to P.O. 8445605  
December 30, 1963

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