

PRATT & WHITNEY, ROCKETDYNE, INC. (PWR) A UNITED TECHNOLOGIES COMPANY

DESIGN & BUILD CONTRACT NO.

This contract entered into this day of , 20 , by and between Pratt & Whitney Rocketdyne, Inc., (herein called "Buyer") and , (herein called "Designer/Builder").

WITNESSETH that the parties hereto do mutually agree as follows:

1. STATEMENT OF WORK

- A. Designer/Builder shall perform the following, which shall collectively hereafter be referred to as the "Work" or "work":

- B. The Work shall be completed on or before _____. Time shall be of the essence in the performance of this contract.

- C. Buyer shall pay to Designer/Builder for the performance of the Work and all of the Designer/Builder's obligations hereunder a fixed price of \$, which price shall constitute total compensation to be paid to Designer/Builder for all of its undertakings hereunder including, without limitation, procurement of bonds and insurance.

- D. Unless otherwise provided herein, all Federal, State and local taxes are included in the price stated in Paragraph C above.

2. CHANGES

- A. Designer/Builder and Buyer may at any time, without notice to or consent of any sureties, by written change agreement hereto, make changes in the Work or otherwise amend this contract.

- B. Notwithstanding the foregoing, Buyer may at anytime, by written change notice to Designer/Builder, and without notice to or consent of any sureties, make changes in or additions to the specifications, require additional work or services or direct the omission of work or services covered by this contract. If any such change or requirement causes any increase or decrease in the Designer/Builder's cost of, or the time required for, performance of this contract, an equitable adjustment shall be made in the contract price or performance schedule, or both, and this contract shall be modified in writing accordingly. No claim by Designer/Builder for adjustment under this Paragraph 2B shall be valid unless asserted in writing by the Designer/Builder within ten (10) days from the date of receipt by Designer/Builder of the written order; provided, however, that Buyer may, in its discretion, receive and act upon any such claim so made at any time prior to final payment under this contract as changed. Nothing in this contract shall excuse Designer/Builder from proceeding with the contract as changed. Designer/Builder shall make no additions, changes or alterations in the design after acceptance by Buyer. No additions, changes or alterations shall be made except upon the written order of Buyer, as provided herein.

- C. No change agreement or change notice to this contract shall be binding on either Designer/Builder or Buyer unless in writing signed by an authorized Buyer Procurement Representative, and for Designer/Builder by _____.

3. PAYMENTS

- A. Upon application of Designer/Builder accompanied by written invoices, Buyer shall make monthly payments as the Work progresses based upon the percentage of the completion of the Work as determined from estimates submitted and certified to by Designer/Builder and approved by Buyer, provided, however, that any monthly payment shall not exceed _____ of the contract price provided for in Paragraph 1C multiplied by the percentage of completion of the Work as of the date of the invoice, less the aggregate of all payments previously made.

- B. Within thirty five (35) days after completion of the Work and its final acceptance by Buyer, Buyer shall pay the unpaid balance of the contract price, less any sum that may be necessary to settle any claims which Buyer may have against Designer/Builder, or that may be necessary to settle any outstanding obligations of Designer/Builder or of its subcontractors arising out of or incident to the performance of this contract. Prior to final payment and as condition thereto, Designer/Builder shall furnish Buyer with (i) a certified statement of Designer/Builder that all bills and claims have been satisfied, except as stated therein, and (ii) a release of all claims against Buyer, arising under and by virtue of the contract, other than such claims as may be specifically excepted by Designer/Builder with the approval of Buyer from the operation of the release in stated amount to be set forth therein.

4. WARRANTY

Unless otherwise agreed to in writing by the parties, Designer/Builder warrants that the Work shall be performed: in the best and most workmanlike manner by qualified, careful and efficient workers, in strict conformity with the best standard practices; shall be free from defect in workmanship and material; and shall conform with all provisions of this contract, including but not limited to, all specifications and drawings. The provisions of this warranty, together with any applicable warranties and guarantees of Designer/Builder's subcontractors and suppliers, shall survive inspection, test and acceptance of and payment for the work performed hereunder and shall run to Buyer, its successors, assigns and customers. Except for latent defects, fraud or such gross mistakes of Designer/Builder as amount to fraud, notice of any defect or nonconformity may be given by Buyer to Designer/Builder at any time prior to the expiration of one (1) year after final acceptance by Buyer of such work. Designer/Builder shall promptly perform all work required to correct such defects or nonconformities by replacement or repair, all at Designer/Builder's sole cost and expense. All defective or nonconforming materials which Buyer requires to be replaced shall be removed promptly from the site of the work by Designer/Builder and at its sole expense. If Designer/Builder fails promptly to correct any nonconformity or defect, as directed by Buyer, Buyer may correct such defect or nonconformity, by replacement or repair, and charge the cost thereof to Designer/Builder. Work required to be corrected or replaced shall be subject to the provisions of this Paragraph and the Paragraph hereof entitled "Inspection" in the same manner and to the same extent as when such work was initially presented for final acceptance.

5. INSPECTION

The work shall be subject to inspection and test by Buyer and its authorized representatives during manufacture and construction and at all other times and places, including without limitation the plants of Designer/Builder and any of its subcontractors and suppliers. Designer/Builder shall provide all reasonable facilities and assistance for the safety and convenience of Buyer's inspectors. All inspections and facilities and tests shall be performed in such manner as to not unduly delay the Work. The Work shall be subject to final inspection and acceptance notwithstanding any payments or other prior inspections. Such final inspection shall be made within reasonable time after completion of the Work.

6. REPRESENTATIVES, TECHNICAL ASSISTANCE AND EMPLOYEES

The below listed representatives shall be available at all reasonable times and shall have authority to act on behalf of their employer except the Buyer Representatives shall not have the authority to act in any manner which would result in an increase or decrease of the scope of work or of the price of this contract or which would otherwise change the provisions of this contract. Buyer shall furnish such information and technical assistance to Designer/Builder as shall be reasonably required in connection with the Designer/Builder's work hereunder. However, no such information or assistance shall relieve Designer/Builder of its responsibility for the furnishing of a design in accordance with all the provisions of this contract, constitute an acceptance of Designer/Builder's work, nor relieve Designer/Builder of any of its obligations under this contract.

A. Buyer

1. Representative for Administration:
2. Representative for Design:
3. Representative for Construction Coordination:

B. Designer/Builder

1. Representative for Administration:
2. Representative for Design:
3. Construction Project Manager:
4. Construction Superintendent:

Designer/Builder shall keep a competent superintendent continuously on the Work to whom the construction coordinator may give directions with regard to the Work from time to time. All of the employees of Designer/Builder engaged in the Work shall be subject to the rules and regulations at any time promulgated by Buyer for the safe, orderly, and efficient conduct of all operations upon the site where the Work is to be performed. Buyer shall have Form 5839e the right to require the removal from the Work of any employee of Designer/Builder or any of its subcontractors, who, in Buyer's opinion, is not qualified to perform the assigned work or who is guilty of improper conduct.

The Designer/Builder representatives shall not be changed throughout performance of this contract without Buyer's prior written consent.

7. WORKMANSHIP AND MATERIALS

- A. Designer/Builder represents that it has carefully examined all drawings and specifications for the work, its surroundings and the local conditions present at the site of work.
- B. Unless otherwise specifically provided for in the specifications, all workmanship, equipment, materials, and articles incorporated in the Work covered by this contract are to be new and of the most suitable grade of their respective kinds for the purpose intended. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, Buyer shall decide the questions of equality. In the manner, and to the extent required by the specifications, Designer/Builder shall furnish Buyer for approval full information concerning the equipment, materials, or articles which it contemplates incorporating in the Work. Samples of material shall be submitted for approval when required by the specification.

C. In addition to any requirement of the specifications, and prior to commencing the work covered by this contract, Designer/Builder shall furnish Buyer for approval a complete list of the subcontractors and the equipment, materials, or articles Designer/Builder proposes to use in the performance of this contract. Designer/Builder shall use in the performance of this contract only those subcontractors and equipment, materials or articles which have been approved by Buyer. This approval by Buyer will not relieve Designer/Builder of its responsibility for the performance of any of such subcontractors or for any of the equipment, materials or articles incorporated or used in the Work.

8. INSURANCE AND INDEMNITY

A. Designer/Builder shall indemnify and hold Buyer, its directors, agents and employees harmless from all claims, actions, damages liabilities and expenses, including counsel fees, for injury to or death of any persons caused in whole or in part by the acts or omissions of Designer/Builder, Designer/Builder's subcontractors, or anyone directly or indirectly employed by them arising out of or in any connected with the performance of the Work under this contract.

B. Designer/Builder shall assume all risk of loss of or damage to all improvements being constructed hereunder and all material, supplies and equipment used or to be used in the construction of such improvements arising from any cause whatsoever, including the acts of Buyer, its officers, directors, agents, and employees until all such improvements are finally accepted by Buyer.

C. Designer/Builder shall at all times maintain and shall cause its subcontractors at all times to maintain the following listed minimum insurance coverages, limits and amounts:

1. Worker's Compensation Insurance for statutory requirements in the states of Operation and Employers' Liability Insurance with limits of \$500,000 for injuries to or death of any one or more persons resulting from any one accident or occupational disease. The coverage must include "All States" endorsement.
2. Comprehensive General Liability Insurance with combined single limit bodily injury and property damage of not less than \$5 million per occurrence for the Designer/Builder and \$1 million per occurrence for its subcontractors; including: (i) Completed operations, (ii) Contractual liability assumed under this contract.
3. Comprehensive Automobile Liability Insurance covering owned, non-owned, and hired motor vehicles, with combined single limit bodily injury and property damage of not less than \$5 million per occurrence for the Designer/Builder and \$1 million per occurrence for its subcontractors.
4. All Risk Installation Floater or Equivalent in amounts equal to the replacement cost of the Work, covering loss or damage to Work in the course of construction, including all machinery, materials, and supplies on the premises or in transit thereto, and intended to become a part of the finished Work, until final acceptance by Buyer.
5. Designer/Builder shall, and require its subcontractors to have all insurance policies covering the Work performed under this contract endorsed as follows: (i) Include Buyer, its directors, officers, agents, and employees as additional insureds; (ii) Waive the right of recovery or subrogation against Buyer, its directors, officers, agents, and employees. In addition to coverages listed herein, this waiver must be added by endorsement to all floaters or policies covering Designer/Builder's property used to perform Work under this contract with Buyer; (iii) No cancellation or material change in the policies shall become effective except on thirty (30) days notice thereof to Buyer.
6. All insurance coverages required herein set forth shall be at the sole cost and expense of Designer/Builder and all deductibles shall be assumed by, for the account of, and at the Designer/Builder's sole risk.
7. Designer/Builder shall furnish evidence of insurance satisfactory to Buyer and permit any authorized representative of Buyer to examine Designer/Builder's original insurance policies, should so request. Should Designer/Builder at any time neglect or refuse to provide the insurance required herein, or should such insurance be canceled, Buyer shall have the right to procure the same and the cost thereof shall be deducted from monies then due or thereafter to become due Designer/Builder. Designer/Builder shall not commence the Work under this contract until all of the insurance required herein shall have been obtained by Designer/Builder.

9. SPECIFICATIONS AND DRAWINGS

A. Ownership

The specifications and accompanying drawings are the property of, and shall be returned to Buyer at the completion of the Work, and before the Work is accepted or, if Designer/Builder does not complete the Work, shall be returned to Buyer prior to Designer/Builder withdrawing from the site.

B. Conflicts, Omissions, Mis-description, Mis-information

Designer/Builder shall keep on the work site a copy of the drawings and specifications and Buyer shall at all times have access thereto. Anything mentioned in the specifications and not shown in the drawings or shown in the drawings and not mentioned in the specifications, shall be of like effect as if shown and mentioned in both. In case of difference between the drawings and the specifications, the specification shall govern.

Omissions from the drawings or specifications or the mis-description of details of work which are either necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Designer/Builder from performing such omissions or mis-described details of the work, but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

C. Checking of Drawings and Dimensions

Designer/Builder shall check all furnished drawings immediately upon their receipt and shall promptly notify Buyer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Except as Buyer may otherwise determine, in the case of any ambiguity or inconsistency between large scale drawings and small scale drawings, the former shall govern and in the case of any ambiguity or inconsistency between the general provisions of this contract and the specifications, the former shall govern.

D. Deviations

Deviations from specifications and the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after authority is obtained from Buyer.

E. Interpretations

All questions regarding the figures, drawings, plans and specifications and the interpretation thereof and the resolving of conflicts or inconsistencies therein shall be determined by Buyer.

F. Special Drawings

Whenever required by the specifications, Designer/Builder shall make special or detailed drawings in amplification of the drawings referred to in this contract or in furtherance of the specifications before proceeding with the Work, which drawings shall be subject to the approval of Buyer. When a drawing has been approved, Designer/Builder shall furnish Buyer with additional blueprint copies or with the tracing or an equivalent. If a tracing is submitted, Buyer will make such prints as required and will return the tracing to the Designer/Builder. Upon completion of the Work, Designer/Builder shall furnish Buyer with one complete set of all approved drawings which shall become the property of Buyer.

G. Maintenance Drawings

1. During the performance of work under this contract, Designer/Builder shall record and delineate accurately on one set of black and white prints of contract drawings all changes in such work, which constitute departures from the original contract drawings. The set of drawings thus corrected and changed shall show the Work as actually constructed. Such maintenance drawings shall be delivered to Buyer at the earliest practicable date prior to completion of all work under the contract, in any event not later than the date of acceptance of the completed work by Buyer.
2. Designer/Builder shall review said maintenance drawings on the job site with the Buyer Representative at weekly intervals to verify that data is properly recorded.
3. Maintenance drawings shall show sufficient detail to convey the following information:
 - (i) Physical dimensions and relation to existing conditions; plan elevation and sectional dimensions, both above and below grade; all pipe and wire sizes. Special carte shall be used in horizontal and vertical location of all underground or hidden installations.
 - (ii) Description of materials and processes sufficient to determine financial value: State grades, thicknesses and types of materials, especially concealed parts.
 - (iii) Test performed and results obtained: Show results of all on-job tests and check outs.
 - (iv) Operations and maintenance information: Submit schematics diagrams, control diagrams, maintenance charts, and all other similar necessary diagrams and charts where applicable.

The approval by Buyer of any drawings shall not relieve Designer/Builder of any of its obligations hereunder nor excuse nor constitute a waiver of any errors, discrepancies or omissions contained therein.

10. REGULATIONS

- A. Movement of personnel, equipment, and tools on and off Buyer property and while on the site shall be in accordance with Buyer's plant security regulations. Information as to such regulations will be made available to Designer-Builder by Buyer.
- B. It shall be Designer/Builder's responsibility to conform to good housekeeping rules by keeping all working areas, as well as the designated area which will be assigned Designer/Builder for storage of material and equipment to be used in the performance of the Work, in a clean, neat, and orderly condition.
- C. All materials removed from the stock area to the working area shall be moved in such a manner as not to interfere with Buyer's operations.
- D. All material and equipment removed in the performance of this contract and which are to be returned to Buyer shall be removed from the working area and disposed of as directed by Buyer. All non-salvageable material and debris shall be immediately removed from the site and from Buyer's premises and disposed of by Designer/Builder.
- E. Designer/Builder shall be required to exercise extreme precautions in preventing dust, chips, droppings, water and other foreign objects from infiltrating into adjacent areas.
- F. Designer/Builder shall fully cooperate with Buyer and any other contractors doing work not covered by this contract and perform the

Work hereunder so as to minimize any conflicts with such other contractors as may be directed by Buyer. Designer/Builder shall not commit or permit any act that will unreasonably interfere with the performance of work by other contractors or with operations of Buyer.

G. Designer/Builder shall also comply with any other regulations that Buyer may issue regarding performance of the Work.

11. SAFETY AND HOUSEKEEPING

A. Accident Prevention

- (1) The Work shall be performed with due regard to safety, and in strict compliance with all applicable state and local laws and ordinances, and with the rules and regulations of Buyer, copies of which will be furnished upon request. All areas and equipment shall be maintained in such conditions as will permit the same to be safely used and operated.
- (2) Designer/Builder shall conform to the current safety engineering practices as set forth in the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America, and in the publications of the National Safety Council, to the extent that such practices are not contrary to the requirements of subparagraph (1) above.
- (3) The safety measures taken by the Designer/Builder shall be such as the nature of the Work and the conditions under which it is to be performed may demand, and shall include the following:
 - (i) Adequate first aid facilities and equipment.
 - (ii) Adequate artificial illumination during all hours that, and at all places where, natural illumination is inadequate for the Work being performed.
 - (iii) Instructions in accident prevention to reach all employees, and the posting of bulletins relating thereto.
 - (iv) Such machinery guards, safe scaffolds, runways, ladders, railings, and gangplanks, including without limitation such other safety devices, equipment, and apparel as are necessary to prevent accidents or injuries.
 - (v) Keeping all passageways and paths normally used by workmen free from lumber, wire, debris, and other obstacles, and keeping the job as a whole in an orderly and safe condition.
 - (vi) Providing adequate protection and warning around all open pits and excavations throughout progress of the work.

B. Fire Prevention

All operations under the contract shall be so performed that no fire hazards will be needlessly created or permitted to exist. To this end, all necessary precautions shall be taken with particular reference to the following:

- (1) Clearance of the site in the vicinity of structures and combustible materials, including temporary construction, trees, shrubs, vegetable growths, and other matter that might communicate fire to such structures or materials.
- (2) Storage and handling of explosives, gasoline, oil, and other fuels, lubricants, chemicals, and all similar materials of an inflammable nature.
- (3) Segregation and spacing of temporary structures and storage piles of lumber and other combustible construction materials.
- (4) Disposition of waste materials resulting from the operations, the accumulation of which, by the nature of the materials and their location and quantity, might create or increase a fire hazard.
- (5) Immediately following the initial delivery and storage of combustible materials at the site of the Work, and throughout the construction period thereafter, Designer/Builder shall supply and maintain suitable means of improvised fire protection equipment, unless adequate means of such protection are then existent or made available for uninterrupted service.

C. Material Storage

Designer/Builder shall store all materials in such areas as are designated by Buyer.

D. Dust Palliation

At all times, Designer/Builder shall effectively dust-palliate the working area, roads used in the operations and involved portions of the site. Such palliation shall consist of intermittent watering and sprinkling of such frequency as will satisfactorily allay the dust during all hours.

11. PERMITS AND LICENSES

Designer/Builder shall procure all necessary permits, licenses, and acceptances required by the State of California, and all political subdivisions thereof, and of any other duly constituted public authority, and furnish such evidence of compliance therewith as Buyer may request.

12. EXCUSABLE DELAYS

Neither party shall be liable in damages by reason of any delay in completion of the Work hereunder due to causes beyond its reasonable control and without its fault or negligence, including without limitation, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and (unless Buyer finds the materials or supplies to be furnished under a subcontract are obtainable from other sources) delays of a subcontractor due to such causes. Designer/Builder shall notify Buyer in writing within ten (10) days after the beginning of any such delay.

13. TERMINATION

- A. If Designer/Builder shall fail to comply with any of the provisions hereof, or in the event Designer/Builder should become the subject of a proceeding under state or federal law for relief of debtors, or if Designer/Builder makes an assignment for the benefit of creditors, after five (5) days advance written notice thereof in which period of time designer/Builder fails to take reasonable steps to cure such default, Buyer shall have the right, notwithstanding the provisions of the Paragraph hereof entitled "Excusable Delays," to

hold Designer/Builder in default and cancel this contract in whole or in part.

- B. Without limiting any rights which Buyer may have by reason of any default by Designer/Builder hereunder, Buyer reserves the right to terminate this contract in whole or in part at its convenience. In such even, Buyer shall compensate Designer/Builder, subject to deduction for previous payments (i) by reimbursing Designer/Builder for all actual expenditures and costs approved by Buyer as having been made or incurred in performing under this contract, (ii) by reimbursing Designer/Builder for all expenditures made and costs incurred with Buyer's prior written approval in settling or discharging outstanding commitments entered into by Designer/Builder in performing under this contract and (iii) by paying Designer/Builder as a profit, insofar as a profit is realized hereunder, an amount equal to the profit on the entire contract estimated at the time of termination, multiplied by the percentage of completion of the Work. In no event, however, will the compensation to Designer/Builder exceed the total contract price less payment previously made and less the contract price of work not terminated. Upon receipt of any notice of termination, Designer/Builder shall, unless the notice otherwise directs, (i) immediately discontinue the Work and the placing of all orders and subcontracts in connection with this contract, (ii) immediately cancel all existing orders and subcontracts made hereunder and (iii) immediately transfer to Buyer all materials, supplies, work-in-process, appliances, facilities, equipment, machinery and tools acquired by Designer/Builder in connection with the performance of this contract and all plans, drawings, specifications, and other information for use in connection therewith. Notice of termination shall be given by telegraph or other writing.

14. FAILURE TO PERFORM

Should Designer/Builder, at any time during the progress of the Work, refuse or neglect to supply sufficient material or labor, or fail in compliance with any provision of this contract, Buyer shall have the right, without prejudice to any other right or remedy it may have, to provide such materials and labor, or make good such deficiencies as Buyer may deem expedient after five (5) days written notice, and Designer/Builder shall be liable for the cost and expense thereof, which may be deducted by Buyer from any money that may be due Designer/Builder.

15. PATENTS

A. Patent Indemnity

Designer/Builder hereby indemnifies Buyer, its directors, officers, agents, employees, successors, and assigns against loss, damage or liability, including costs, expenses, and attorney fees, which may be incurred on account of any suit, claim, judgment or demand involving infringement or alleged infringement upon any copyrights, trademarks or Letters Patent arising out of the performance of this contract or out of the use or disposal by or for the account of Buyer of supplies furnished or construction work performed hereunder; provided Buyer shall notify Designer/Builder of any suit instituted against it and, to the full extent of its ability to do so, shall permit Designer/Builder to defend the same or make settlement in respect thereof.

B. Notice and Assistance

- (1) Designer/Builder shall report to Buyer, promptly and in reasonable written detail, each claim of patent infringement based on the performance of this contract and asserted against it, or against any of its subcontractors or suppliers if it has notice thereof.
- (2) In the event of litigation against Buyer on account of any claim of infringement arising out of the performance of this contract or out of the use of any supplies furnished or construction work performed hereunder, Designer/Builder shall furnish to Buyer upon request, all evidence and information in its possession pertaining to the defense of such litigation.

C. Requirements

Designer/Builder's obligation hereunder shall not extend to claims arising out of Designer/Builder's compliance with specific designs of Buyer.

16. LIENS AND BONDS

- A. Designer/Builder shall indemnify and hold harmless Buyer, its directors, officers, agents and employees, from all claims, demands, liabilities, costs, expenses, causes of action or suits of whatever nature arising out of the labor and materials furnished by Designer/Builder or its subcontractors under this contract. The term "subcontractor" as used in this paragraph shall mean a subcontractor of any tier.

- B. If contract price is equal to or exceeds \$1 million dollars, Designer/Builder shall provide performance and payment bond with good and sufficient sureties and in an amount not less than the contract price, as the same may be revised from time to time, which bond must be satisfactory to Buyer.

- C. The bonds required above shall be provided prior to the commencement of the Work, unless otherwise specified by Buyer in writing.

17. COMPLIANCE WITH LAWS

To the extent applicable hereto, Designer/Builder shall in the performance of this contract comply with: the Fair Labor Standards Act of 1938 (29 U.S.C. 201-219); the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45); the Contract Work Hours and Safety Act (40 U.S.C. 327-333); laws prohibiting the use of convict labor; all other federal, state, and local laws; all regulations and orders issued under any applicable law. Designer/Builder warrants that the work to be performed hereunder complies with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651-678) and the Radiation Control for Health and safety Act of 1968 (42 U.S.C. 263 b-n) and all

applicable regulations and standards promulgated hereunder. Designer/Builder warrants that work done under this contract will be performed in compliance with all applicable laws, rules, regulations, ordinances, deed restrictions and building codes.

18. SECURITY REQUIREMENTS

To the extent that this contract involves access to security information or classified areas, Designer/Builder shall comply with all applicable requirements and regulations of Buyer and the Government.

19. SUBCONTRACTING AND ASSIGNMENT

Performance of the Work, in whole or in part, may not be subcontracted by Designer/Builder, and Designer/Builder may not assign any of its rights or obligations hereunder, without prior written consent of Buyer.

20. EFFECT OF INVALIDITY

The invalidity in whole or in part of any provisions hereof shall not affect the validity of any other provisions.

21. REMEDIES

The remedies provide Buyer herein shall be cumulative, and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach.

22. UTILIZATION OF SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS, WOMENOWNED BUSINESS AND LABOR SURPLUS AREA CONCERNS

To support Government policy as declared by the Congress, and as consistent with the efficient performance of this contract, Designer/Builder agrees to accomplish a maximum amount of subcontracting to small business, small disadvantaged and women-owned business concerns; and to use its best efforts to place subcontracts hereunder with subcontractors who will perform such subcontracts substantially in areas of persistent or substantial labor surplus when it can be done at prices no higher than are obtainable elsewhere observing exemptions and preferential order established by applicable Government regulations.

23. BOOKS AND RECORDS

Designer/Builder's books, records and its plants or such part thereof as may be engaged in the performance of this contract, shall at all reasonable times be subject to inspection and audit by any authorized representative of Buyer.

24. GRATUITIES

Designer/Builder warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to Buyer's employees, agents or representatives with a view toward securing this contract or securing favorable treatment with respect thereto.

25. RELEASE OF NEWS INFORMATION AND ADVERTISING

Designer/Builder SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF BUYER
(i) make any news release, public announcement, denial or confirmation of all or any part of the subject matter of this contract, or any phase of any program hereunder; or (ii) in any manner advertise or publish the fact the Buyer has placed this contract.

26. NOTICE TO BUYER OF LABOR DISPUTES

- A. Whenever Designer/Builder has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, Designer/Builder shall immediately give notice thereof, including all relevant information with respect thereto, to Buyer.
- B. Designer/Builder shall insert the substance of this clause, including this subparagraph B, in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract, except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify Designer/Builder of all relevant information with respect to such dispute.

27. BUYER-FURNISHED ITEMS

The provisions of this paragraph shall apply if Buyer-furnished items are to be used in the course of this contract. The delivery or performance dates for the supplies or services to be furnished by Designer/Builder under this contract are based upon the expectation that, to the extent Buyer is to furnish items to Designer/Builder, such items will be delivered, suitable for use, to Designer/Builder at the times stated in this contract, or in the event such times are not stated, in a timely manner. In the event that Buyer-furnished items are not delivered to Designer/Builder by such time or times, Buyer shall, upon written request made by Designer/Builder, determine the delay occasioned Designer/Builder thereby, and equitably adjust the delivery or performance dates or the contract, or both, and any other contractual provisions affected by such delay in accordance with the procedures set forth in the paragraph of this contract entitled "Changes"; provided Designer/Builder makes such written request to Buyer within thirty (30) days after the date scheduled for Buyer delivery. In the event Buyer-furnished items are received by Designer/Builder in a condition not suitable for the intended use, Designer/Builder shall, upon receipt thereof, notify Buyer of such fact and as direct by Buyer, either (i) return such items at Buyer's expense or otherwise dispose thereof, or (ii) effect repairs or modifications. Upon completion of (i) and (ii) above, Buyer, upon written request of designer/Builder, shall equitably adjust the delivery or performance dates or the Contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures set forth in the Paragraph of this contract entitled "Changes"; provided Designer/Builder makes such written request to Buyer within thirty (30)

days after receipt of said items. The foregoing provisions for adjustment are Designer/Builder's exclusive remedy for such delay or condition and Buyer shall not be in default nor liable to suit for breach of contract by reason of any delay in delivery of Buyer-furnished items or delivery thereof in a condition not suitable for their intended use.

28. DISPUTES

Any dispute arising under this contract which is not settled by agreement of the parties may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this contract, Designer/Builder shall proceed diligently with the performance of this contract in accordance with the decision of Buyer

29. NOTICES

Any notice or order provide for in this contract shall be considered as having been given (i) to Buyer, if mailed by registered mail, postage prepaid to Boeing - Canoga Park, Purchasing Department, 6633 Canoga Avenue, P.O. Box 7922, Canoga Park, CA 91309-7922, Mail Stop QB33 or (ii) to Designer/Builder if delivered personally to its superintendent at the site of the Work, or if mailed by registered mail, postage prepaid to:

30. PROFESSIONAL LIABILITY

Designer/builder agrees that all services performed hereunder by Designer/Builder, its employees and agents shall be performed by persons who are experienced and highly skilled in their professions and in accordance with high standards of workmanship in their field. Buyer may, at its option, by contract or otherwise, replace or correct any defective materials or conditions resulting from Designer/Builder failures, acts, errors and omissions and recover the cost thereof from Designer/Builder; provided Buyer had given notice to Designer/Builder and Designer/Builder had failed to commence reasonable steps to cure such default within five (5) days of such notice. Designer/Builder shall maintain an insurance policy issued by a responsible and solvent insurance company covering errors, omissions or negligent acts of the Designer/Builder. A certificate evidencing such coverage shall be furnished to Buyer within ten (10) days from the date hereof.

31. GOVERNING LAW

This contract and all performance hereunder shall be governed and interpreted by the laws of the State of New York.

32. DESIGN RIGHTS

- A. As a part of this contract, without additional compensation and notwithstanding any termination of this contract, Designer/Builder agrees to and does hereby sell, assign, and transfer to Buyer, its successors, customers and assigns, the entire right, title and interest in and to any and all inventions, discoveries or improvements which are conceived or first actually reduced to practice in the performance of this contract; and to all applications for and Letters Patent covering the same as well as any reissues, divisions, and extensions of said applications or Letters Patent. Designer/Builder further agrees to furnish Buyer with complete information on each such invention, discovery or improvement, and to make, execute and deliver to Buyer any and all patents or patent applications, as well as all papers, documents, affidavits, statements or other instruments in such form, terms and contents as required by Buyer in, or incident to, the prosecution of any and all applications for patent filed by Designer/Builder or Buyer with respect to such inventions, discoveries, or improvements, or in the adjustment or settlement of any interference of other acts or proceedings in which such applications may become involved and Designer/Builder agrees that it will aid Buyer in every way in protecting inventions, discoveries or improvements as may be required by Buyer, except that any expense arising through extending such assistance will be paid by Buyer after proper arrangement with Designer/Builder.

With respect to any invention, discovery or improvement owned by Designer/Builder and which is not conceived or first actually reduced to practice in the performance of this contract but which is described in the information or incorporated in the articles or processes furnished under this contract, Designer/Builder grants Buyer a royalty-free, non-exclusive, irrevocable license to make, have made, use and sell throughout the world.

- B. Subject to the provisions of Paragraph A, all data and information (including computer software, computer data bases, computer software documentation, specifications, designs, drawings, reports, blueprints, and the like) emanating from the performance of work under this contract and data and information which are called for, specified to be delivered or which are in fact, delivered pursuant to this contract shall be the property of Designer/Builder provided, however, Buyer shall have full rights for use, reproduction, and access at all reasonable times even though custody of the documents and their maintenance and safekeeping shall be the responsibility of designer/Builder.

33. ALTERATIONS

The following additional contractual terms and conditions are attached hereto and made a part hereof:

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year first above written.

DESIGNER/BUILDER		PRATT & WHITNEY ROCKETDYNE, INC.	<input type="text"/>
	BY	_____ Signature	BY
	ITS		_____ Signature
LICENSE			
	NO.		