

PART I - THE SCHEDULE

**SECTION H
SPECIAL CONTRACT REQUIREMENTS
FLUOR DANIEL HANFORD, INC.**

TABLE OF CONTENTS

<u>CLAUSE</u>	<u>TITLE</u>	<u>PAGE</u>
H.1	SEPARATE BUSINESS UNIT	H-1
H.2	PROMISES AND COMMITMENTS	H-1
H.3	RESERVED	H-8
H.4	TRI-PARTY AGREEMENT	H-8
H.5	RESERVED	H-9
H.6	RESERVED	H-9
H.7	SITEWIDE SAFETY PROGRAM RECOMMENDATIONS	H-9
H.8	SITEWIDE QUALIFICATION AND TRAINING PLAN	H-9
H.9	ENVIRONMENTAL RESPONSIBILITY	H-10
H.10	EARNED VALUE MANAGEMENT SYSTEM	H-14
H.11	EMERGENCY CLAUSE	H-15
H.12	SHUTDOWN AUTHORIZATION	H-15
H.13	RESERVED	H-16
H.14	RESERVED	H-16
H.15	INCORPORATION OF REVISED DEPARTMENTAL POLICIES AND PROCEDURES	H-16

H.16	WITHDRAWAL OF WORK	H-17
H.17	USE OF DOE FACILITIES	H-17
H.18	WORK FOR OTHERS FUNDING AUTHORIZATION	H-18
H.19	MAKE-OR-BUY PROGRAM/ SUBCONTRACTS CONSENT AND CONTRACT CLAUSE FLOW DOWN REQUIREMENTS	H-19
H.20	LIMITATION ON SUBCONTRACTOR PERIOD OF PERFORMANCE	H-22
H.21	ASSIGNMENT OF SUBCONTRACTS	H-22
H.22	INFORMATION.....	H-22
H.23	OWNERSHIP OF RECORDS	H-24
H.24	PRIVACY ACT SYSTEMS OF RECORDS	H-27
H.25	PAYMENTS AND ADVANCES	H-28
H.26	ASSIGNMENT OF DOE PRIME CONTRACTS	H-32
H.27	GOVERNMENT-OWNED PROPERTY.....	H-32
H.28	ADVANCE UNDERSTANDING ON PERSONNEL COSTS, POLICIES AND PROCEDURES	H-33
H.29	LEGAL DEFENSE AND REIMBURSEMENT OF CONTRACTOR PROTECTIVE FORCE OFFICERS.....	H-33
H.30	RESERVED.....	H-33
H.31	RESERVED.....	H-33
H.32	RETRAINING FOR DISPLACED EMPLOYEES	H-34
H.33	TRANSFER-RELOCATION ALLOWANCE.....	H-34
H.34	LABOR RELATIONS.....	H-34
H.35	DETERMINATION OF APPROPRIATE LABOR STANDARDS	H-35

H.36	SERVICE CONTRACT ACT (SCA) WAGE DETERMINATION.....	H-36
H.37	HANFORD SITE STABILIZATION AGREEMENT.....	H-36
H.38	INSURANCE - LITIGATION AND CLAIMS.....	H-38
H.39	FINANCIAL MANAGEMENT SYSTEM	H-42
H.40	COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS.....	H-43
H.41	PERFORMANCE OBJECTIVES, MEASURES, EXPECTATIONS, AND FEE DISTRIBUTION	H-45
H.42	SEGREGATION OF COSTS	H-48
H.43	AVAILABLE FEE POOL	H-49
H.44	BASE FEE AND AWARD FEE (JUL 1991).....	H-50
H.45	COST SAVINGS PROGRAM	H-53
H.46	DETERMINATION OF INCENTIVE FEES	H-57
H.47	CONDITIONAL PAYMENT OF FEE OR INCENTIVES (EXCLUSIVE OF BASE FEE)	H-58
H.48	PROVISIONAL PAYMENT OF FEE	H-60
H.49	CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY	H-60
H.50	COST SAVINGS PROGRAM EXCLUSION FROM OTHER FEES.....	H-60
H.51	SHARING EARNED FEES WITH EMPLOYEES	H-61
H.52	CONTRACTOR CONTROLLED INSURANCE PROGRAM	H-61
H.53	FRINGE BENEFIT CEILING.....	H-61
H.54	INDIRECT COST ALLOCATIONS.....	H-61
H.55	TRANSITIONS AND TRANSFERS - WORK SCOPES	H-62
H.56	TRANSITIONS AND TRANSFERS - COSTS AND FUNDING.....	H-67

H.57	“324/327 FACILITY TRANSFER”	H-73
H.58	AUTHORIZATION AGREEMENTS	H-73
H.59	LIFE CYCLE ASSET MANAGEMENT GRADED APPROACH.....	H-74
H.60	SPENT NUCLEAR FUELS CONTINGENT FEE	H-78
H.61	LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)	H-80
H.62	LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT, 1999).....	H-80
H.63	TRAVEL RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2000)	H-80

H.1 SEPARATE BUSINESS UNIT

The work performed by the Contractor under this contract shall be conducted by a separate business unit (division, segment, etc.) from the parent company signing this contract. In addition, the Major Subcontractors shall be separate business units from their parent companies. These business units may report or interface directly with a home office as approved by the Contracting Officer.

H.2 PROMISES AND COMMITMENTS

- A. Detailed below and incorporated into this contract is a list of negotiated promises made by the Contractor in its contract proposal, dated March 25, 1996, which have not been identified elsewhere in this contract as a contract requirement. It is recognized that, as appropriate, these promises and commitments may be covered by a performance measure and/or an incentive fee arrangement. However, whether or not the promises/commitments are ever the subject of a performance measure and/or incentivization, the Contractor is expected to, in good faith, strive to meet the stated objectives as part of contract compliance. The extent to which the Contractor is able to achieve success and the extent to which the promises/commitments have been kept shall be considered by DOE in any determination to exercise the Options provided for in Section B of this contract.

The Contractor agrees to the following:

- (1) In filling employment positions for work under the contract, other than for management positions, the Contractor, including Major Subcontractors, niche or other subcontractors, and outsourced entities agree to hire employees from the workforce of the incumbent contractor and its integrated subcontractors (Westinghouse Hanford Company, ICF Kaiser Hanford, and Boeing Computer Services Richland). The number and type of positions to be established, the salary/pay rate ranges for all positions, and the terms and conditions of such employment, except as noted below, are at the sole discretion of the Contractor or Major Subcontractors.

For purposes of this contract, management positions are defined as those above the first-line managerial/supervisory level and as those typically responsible for subordinate staff, budget oversight, and/or policy-making decisions.

After operations begin, subsequent vacant positions (other than those covered under paragraph (1) above) shall be filled in accordance with the Contractor's normal business practices, subject to any other applicable requirements of this

contract, including Section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (see Clauses H.31 through H.33).

- (2) Employees currently employed by the incumbent Contractor and its integrated subcontractors other than management positions who are offered and accept employment with the Contractor and its Major Subcontractors will be paid base salary/pay rates equivalent to the base salary/pay rates they are being paid at the time of the offer if the position for which they are being hired entails duties and responsibilities substantially equivalent to the position last held with the incumbent Contractor.

Employees hired from the previous incumbent Contractor and its integrated subcontractors whose base salaries/pay fall above the maximum rate of the new salary/pay rate range, and who are placed in positions substantially equivalent to their existing position, will be placed in a "red circle" classification. The employees will continue to receive their most recent salary/pay rate paid by the incumbent Contractor or integrated subcontractor, but they shall receive no base salary/pay adjustments until such time as the rate range is increased to include their base salary/pay. They will then be eligible for increases that will result in being paid no more than the maximum of their range.

Employees hired from the previous incumbent Contractor or integrated subcontractors and whose salaries/pay fall below the minimum of the rate range, and who are placed in positions substantially equivalent to their existing positions shall have their salaries/pay rate increased to the minimum of the range.

- (3) The Contractor and Major Subcontractors shall assume the assets, liabilities, and other obligations and continue the defined benefit pension plans (does not include any defined contribution plans) of the incumbent Contractor and integrated subcontractors, on a multiple employer basis for employees of the Contractor and its Major Subcontractors.
- (4) The Contractor and Major Subcontractors shall offer an Internal Revenue Service qualified defined contribution plan(s) for employees of the Contractor and its Major Subcontractors that will accept employee account assets and liabilities from the 401(k) plans of the incumbent Contractor and its integrated subcontractors. The provisions of the plan(s) are at the sole discretion of the Contractor and its Major Subcontractors.
- (5) The Contractor and Major Subcontractors shall credit the length of service of employees currently employed by the incumbent Contractor and its integrated

subcontractors, who are hired for work under this contract or under the subcontracts of Major Subcontractors, toward the service period required for benefits of this contract or subcontracts of Major Subcontractors relating to vacations, sick leave, health insurance, layoff, recall, or other benefits. This includes accepting severance pay credits earned by the employees of the incumbent contractor and integrated subcontractors to the extent that the employees have not exercised any severance pay rights with the incumbent contractor and its integrated subcontractors.

- (6) The Contractor and Major Subcontractors shall respect the right of employees to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities. The Contractor and its Major Subcontractors will be performing substantially similar operations at the same site as the predecessor incumbent Contractor and its integrated subcontractors; and, as a result of the hiring preference, a majority of their potential bargaining unit employees are likely to be former employees of the predecessor incumbent contractor and its integrated subcontractors who had been represented by the respective certified collective bargaining agent. Therefore, the collective bargaining representative of such employees is to be accorded full recognition for negotiating their terms and conditions of employment, and the Contractor shall initially consult with the respective certified collective bargaining agent regarding the initial terms and conditions of employment of those employees who had been represented by the certified collective bargaining agent. The Contractor shall be obligated to recognize and bargain with the certified collective bargaining agent of the predecessor's bargaining unit employees as a successor employer, consistent with the National Labor Relations Act.
- (7) The Contractor shall initially provide for continuity of insurance coverage of employees of the incumbent contractors and their predecessors who are absent and receiving payments under the following programs: Long Term Disability, Short Term Disability, and Workers' Compensation, and including any then current COBRA (Consolidated Omnibus Budget Reconciliation Act) participation in a health benefits insurance program. Such insurance coverage shall be provided under the same terms and conditions as provided in existing programs, including the right of management to change those terms and conditions, where applicable.
- (8) The Contractor shall initially provide for continuity of insurance coverages (health, life, other, as applicable) of employees who have retired from the

incumbent contractors or their predecessors to the extent currently provided by the incumbents. Such insurance coverage shall be provided under the same terms and conditions as provided in existing programs, including the right of management to change those terms and conditions, where applicable.

- (9) The Contractor shall work with DOE and the Tri-Cities to create a local economy which is substantially less dependent on a DOE Hanford payroll. The Contractor commits, with LMHC, to help create 3000 new jobs in the Tri-City area* by the end of the five year contract period. The Contractor will assume 70% of the balance of jobs, following validation of the cumulative number of jobs created through FY 1999, by RL.

*As defined by the FY 1999 "Economic Transition Plan for Project Hanford," MP-006.

- (10) The Contractor shall outsource 50% of funds expended by 2001 to other than Major Subcontractors, including outsourcing by the Major Subcontractors, and within five years, 60% of all outsourced dollars shall be directed to local, regional, and Native American businesses. The Contractor shall also establish a SB/SDB loan program. For purposes of this paragraph, outsourcing means contractual commitments to entities other than the Contractor and Major Subcontractors as defined in this contract."
- (11) The Contractor shall leverage local economic benefit from execution of this contract, and from the worldwide industrial and commercial interest of the Contractor and its Major Subcontractors.
- (12) The Contractor shall reduce DOE capital and fixed operations costs.
- (13) The Contractor shall progressively increase the ratio of outsourced jobs to site staff.
- (14) In collaboration with PNNL, the Contractor shall implement technology transfer and intellectual property management programs to stimulate commercialization, privatization, and entrepreneurship.
- (15) The Contractor shall aggressively pursue conversion of valuable Hanford assets (people, intellectual property, equipment, material, facilities) to commercial productive use.

- (16) The Contractor shall mentor local suppliers and Contractors to help bring their systems and deliverables into line with best-in-class criteria and shall create financial incentives that encourage best-in-class suppliers outside the region to establish and serve from a Tri-Cities base of operations.
- (17) The Contractor shall implement the DOE Mentor/Protege program at Hanford, based on the model developed at Fernald.
- (18) The Contractor shall set up a loan program with financing available to the local business community for capital expenditure or mobilization for new work at Hanford. Businesses that are not able to obtain traditional financing shall have access to capital through Prin Vest, using their Project Hanford subcontracts as collateral.
- (19) Incentives shall be a cornerstone of the Contractor's technology transfer program. Inventors will benefit through royalty sharing, equity ownership in license-based new businesses or the opportunity to start a new business. The Contractor shall establish an Entrepreneurial Leave of Absence program. The Contractor shall coordinate with their Purchasing to leverage idle site facilities, equipment, and materials for the benefit of local businesses and new business creation. The Contractor shall market these resources aggressively, and shall work closely with organizations such as the TRIDEC to leverage these assets into jobs.

In the licensing arena, the Contractor will work with PNNL to provide reduced royalty terms and other incentives for licensees who agree to establish businesses in the region.

- (20) The Contractor's technology transfer activity will 'include industrial and commercial relationships (from CRADAs and licensing to Facility User, Technical Assistance, and Funds-In Agreements).

Working closely with PNNL, the Contractor shall ensure that intellectual property and technologies arising from the PHMC are evaluated for commercial potential and, where appropriate, offered for licensing.

- (21) The Contractor shall perform a Technology Audit and Resource Inventory to produce a database of transferable skills, tools, and capabilities. This continuing process shall promote awareness of Hanford assets, prerequisite to targeting candidates for outsourcing, privatization, licensing, cooperative research and development, technical assistance, facility user agreements, and non-mission asset loan or transfer.

- (22) The Contractor and its Major Subcontractors shall invest a combined total of \$3 million or more during the period from contract award through September 30, 1997, to bring new jobs to the Tri-Cities.

The Contractor's investment in economic transition begins with relocation of six growth-oriented business operations to the area by October 1, 1997. The Contractor's investment continues with the commitment of up to 12 percent of the fees earned above \$7 million, through PHMC performance to benefit the community. This reinvestment shall be structured to leverage the skills, relationships, and purchasing power of the PHMC to the benefit of the Tri-Cities. The proposed step formula for contributions in any given year is:

- 6% of total fees earned between \$7 million and \$14 million
- 8% of total fee over \$7 million if fee is between \$14 million and \$28 million
- 12% of total fee earned over \$7 million if fee is over \$28 million.

The Contractor and its Major Subcontractors shall immediately bring six new subsidiaries or affiliates to the Tri-Cities. By October 1, 1996, 2525 Hanford jobs, and incumbent personnel, shall be outsourced into these organizations, subject to adjustment to reflect actual adjustments in the number of employees, due, for example, to employee elections to accept the retirement package offered by DOE, available through August 30, 1996.

The Contractor commits to the subsequent expansion of these businesses into non-Hanford markets.

The Contractor shall assume major non-billable costs and shall significantly reduce DOE's costs in the first year, with continued savings in the out-years, in the areas of A&E, general engineering, construction management, and procurement. The 1350 personnel performing these functions will reside in a new regional office pursuing work for both Project Hanford and non-Hanford clients, Fluor Daniel Northwest (FDNW). This office shall pursue commercial work to support growth to an additional 125 new jobs above the baseload of 1350 jobs outsourced from Project Hanford. FDNW shall support subcontractor affiliates in their efforts to bring jobs and enterprise to the Tri-Cities. In addition to architect-engineering and construction management, the office shall house regional

business lines providing training, temporary services, systems engineering, and project management.

- (23) The Contractor and Major Subcontractors shall work with local and state governments and economic development groups to target “anchor” industries, evaluate infrastructure development needs, attract targeted businesses, and promote new starts, relocations, and investments in Tri-Cities initiatives. The Contractor shall maintain close ties to corporate executives who are responsible for specific business areas (e.g., foods, pulp and paper, infrastructure, manufacturing, information and communications, environmental, mining, power) to gain access to client and supplier bases.

The Contractor, working with TRIDEC, shall assign and supply experienced people from the Contractor’s parent corporation commercial businesses to assist TRIDEC in attracting new businesses and counsel local citizens wishing to start or expand a business. Professionals experienced in developing business plans, financial evaluations, and marketing plans will be made available for this program under TRIDEC auspices.

- (24) The Contractor agrees to form Columbia Basin Ventures, Inc. (CBV) to provide direct investment or third-party financing to business opportunities that offer high potential for regional growth.

The venture will maintain close working ties with the Project Hanford Office of Technology Management and Economic Transition, but shall provide a complementary resource to focus on non-Hanford business and technology. The Contractor and its Major Subcontractors shall establish a \$7.56M investment fund (this number represents the Contractor’s share in the \$10M original investment fund) from their private resources for use by CBV. Credit will be given against this fund for prior Contractor participation (without LMHC) in CBV through FY 1999.

CBV shall work through existing local agencies (e.g., TRIDEC, Tri-Cities ports and municipalities, and the Benton Franklin Regional Council), providing personnel from the Contractor’s parent corporation commercial businesses to support their initiatives and enhance their effectiveness. Personnel expert in industrial recruitment shall be assigned to TRIDEC. CBV shall exert the corporate leverage developed by these companies. The Contractor shall put this buying power and supplier network to use in efforts to attract industry and broaden the market reach of Hanford spin-off companies. CBV shall provide and attract investment capital for local ventures and shall partner with local academic

(WSU, CBC), research (PNNL), economic development organizations and industry organizations to help create jobs in the Tri-Cities area.

- (25) The Contractor shall partner with the northwestern division of the Associated Western Universities (AWU NW). The Contractor shall broaden the consortium's training activity associated with the University/DOE Laboratory Cooperative Science Education Program (Lab Coop) fellowships at Hanford. The Contractor shall develop an engineering Mentorship Program to bring science and engineering students into contact with the Contractor and Major Subcontractor managers at engineering and environmental remediation projects.

The Contractor shall work with Columbia Basin College (CBC) and Washington State University Tri-Cities (an AWU NW member) to design and implement education/training programs keyed to markets that can use skills acquired at Hanford in order to assist the diverse Hanford workforce transition more effectively into the private sector. This effort will be integrated into the Site-wide Training Program.

- (26) The Contractor shall form a Community Involvement Team to be a primary vehicle for the PHMC civic and regional involvement. The team will be administered by a senior executive of the PHMC's Office of External Stakeholders, and will help mobilize and support personal commitments to community support activity.

PHMC employees will be encouraged to donate their time to instruction in local schools through programs such as MathCounts, Engineer-in-the-Classroom, and partnering with local elementary schools to provide science or computer instruction and supplies. Managers shall be encouraged to donate a minimum of 40 hours/year in community service. This involvement shall be a consideration in manager performance evaluations.

H.3 RESERVED

H.4 TRI-PARTY AGREEMENT

The DOE, the U.S. Environmental Protection Agency Region 10 (EPA), and the Washington State Department of Ecology (Ecology) have entered into the Hanford Federal Facility Agreement and Consent Order, referred to as the Tri-Party Agreement (TPA) to ensure compliance with the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA). The TPA sets forth certain requirements and milestones for cleanup activities at the Hanford Site. The

Contractor agrees to plan and perform the work under this contract in accordance with DOE direction concerning implementation of the TPA and achievement of current and future milestones in the TPA.

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H.5 RESERVED

H.6 RESERVED

H.7 SITEWIDE SAFETY PROGRAM RECOMMENDATIONS

In order to provide consistency on the Hanford Site, the Contractor shall recommend to DOE those safety programs which are appropriate for Hanford sitewide implementation, to provide the proper emphasis and requirements for safety for both the Contractor and all subcontractors working at the site, including any provisions for sitewide training not currently in place. The Contractor shall include a justification for the programs selected as a part of that recommendation.

H.8 SITEWIDE QUALIFICATION AND TRAINING PLAN

- A. In order to provide consistency with personnel qualification on the Hanford Site, the Contractor shall submit a Sitewide Qualification and Training Plan (see Section J, Appendix E). This Plan shows how the Contractor will ensure that all personnel working at the Hanford Site meet and maintain qualification and training requirements in accordance with DOE and other applicable regulations. The plan shall include:
- (1) Assignment of responsibilities both with the DOE Richland Operations Office (RL) and any Hanford central training organizations.

- (2) How the Contractor will use a single point of contact project management approach to integrate and track the best available training resources to meet the diverse training needs of the Hanford Site.
- (3) How the Contractor will recognize and use equivalent training and/or reciprocity for training.
- (4) A system to track flowdown of training requirements to subcontractors.
- (5) How the “Best in Class” and “Make or Buy” approach will be used to identify and use high-quality training while eliminating redundant and duplicate programs.
- (6) A system to track training completed (needs to be part of the Human Resources “People Soft” system (see Section C.2.C.(3))).

H.9 ENVIRONMENTAL RESPONSIBILITY

A. General

Contractor is required to comply with all environmental laws, regulations, and procedures applicable to the work being performed under this Contract. This includes, but is not limited to, compliance with applicable Federal, State and local laws and regulations, interagency agreements such as the Hanford Federal Facility Agreement and Consent Decree [aka Tri-Party Agreement (TPA)], consent orders, consent decrees, and settlement agreements between DOE and Federal and State regulatory agencies.

B. Environmental Permits

This clause addresses the following permit scenarios:

- (1) where the Contractor is the sole permittee; (2) where the Contractor and DOE are joint permittees; (3) where multiple Contractors are permittees.
- (1) Contractor as Sole Permittee. To the extent permitted by law and subject to other applicable provisions of the contract that impose responsibilities on DOE, and provisions of law that impose responsibilities on DOE or third parties, the Contractor shall be responsible for obtaining in its own name, shall sign, and shall be solely responsible for compliance with all permits, authorizations and approvals from Federal, State, and local regulatory agencies which are necessary for the performance of the work required of the Contractor under this Contract.

Under this permit scenario, that Contractor shall make no commitments or set precedents that are detrimental to DOE or other Contractors. Contractor shall coordinate its permitting activities with DOE, and with other Hanford Site Contractors which may be affected by the permit or precedent established therein, prior to taking the permit action.

- (2) Contractor and DOE as Joint Permittees. Where appropriate, required by law, or required by applicable regulatory agencies, DOE shall sign permits as owner or as owner/operator with Contractor as operator or co-operator, respectively. DOE will co-sign Hazardous Waste permit applications as owner/operator where required by applicable law. In this scenario, the Contractor must coordinate its actions with DOE.
- (3) Multiple Contractors as Permittees. Where appropriate, in situations where multiple Contractors are operators or co-operators of operations requiring environmental permits, DOE shall sign such permits as owner or co-operator and affected Contractors shall sign as operators, or co-operators, respectively. In this scenario, the Contractor must coordinate as appropriate with DOE and other Contractors affected by the permit.

C. Permit Applications

The Contractor shall provide to DOE for review and comment in draft form any permit applications and other regulatory materials and permits submitted to regulatory agencies for the purposes of obtaining a permit. In the event the permit application is required to be co-signed, submitted by DOE, or is related to a permit in which DOE is a permittee, the Contractor shall provide the application for review and comment. All such materials shall be provided to DOE initially not later than 90 days prior to the date they are to be submitted to the regulatory agency. Contractor shall provide final regulatory documents to DOE at least 30 days prior to the date of submittal to the regulatory agencies for DOE's final review and signature or concurrence which shall be performed by DOE in a prompt manner.

D. Financial Responsibility

DOE agrees that if bonds, insurance, or administrative fees are required as a condition for permits obtained by Contractor under this Contract, such costs shall be allowable. In the event such costs are determined by DOE to be excessive or unreasonable, DOE shall provide the regulatory agency with an acceptable form of financial responsibility. Under no circumstances shall the Contractor or its parent be required to provide any corporate resources or corporate guarantees to satisfy such regulatory requirements.

E. Copies, Technical Information

The Contractor shall provide DOE copies of all environmental permits, authorizations, and regulatory approvals issued to the Contractor by the regulatory agencies. DOE shall, upon request, make available to the Contractor access to copies of all environmental permits, authorizations, and approvals issued by the regulatory agencies to DOE that the Contractor may need to comply with applicable law. The Contractor and DOE shall provide to the other copies of all documentation, such as, letters, reports, or other such materials transmitted either to or from regulatory agencies relating to the contract work. The Contractor and DOE shall maintain all necessary technical information required to support applications for revision of DOE or other Hanford Site Contractor environmental permits when such applications or revisions are related to Contractor's operations. Upon request, Contractor or DOE shall provide to the other access to all necessary and available technical information required to support applications for or revisions to permits or permit applications. The Contractor shall provide to DOE a certification statement relating to such technical information in the form required by the following paragraph.

F. Certifications

The Contractor shall provide a written certification statement attesting that information DOE is requested to sign was prepared in accordance with applicable requirements. The Contractor shall include the following certification statement in the submittal of such materials to DOE:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification statement shall be signed by the individual authorized to sign such certification statements submitted to Federal or state regulatory agencies under the applicable regulatory program. DOE shall provide a similar statement for information provided by DOE to the Contractor to be included in any Contractor permit application.

G. Fines, Penalties, Allowable Costs

The Contractor shall accept, in its own name, service of proposed notices, or notices of, correction, penalty, fine, violation, administrative orders, citation, or notice of alleged violations, (e.g., NOC, NOP, NOF, PNOV, NOV, NOAV) and any similar type notices issued by Federal or State regulators to the Contractor resulting from or relating to Contractor's performance of work under this Contract, without regard to liability. The Contractor shall immediately notify DOE of such receipt and shall provide copies or originals of such documents as soon as possible thereafter. The allowability of the costs associated with fines and penalties shall be governed by provisions of this contract and applicable law. The Contractor shall have plenary authority to allocate any fines and penalties among its subcontractors based on criteria developed by Contractor and applied in Contractor's sole discretion. The Contractor shall indemnify and hold harmless DOE and its employees, officers, agents from any costs, claims (including third-party claims for damage to persons or property), demands, fines or penalties, including reasonable legal costs, resulting from any failure of the Contractor to comply with applicable permit or regulatory requirements, or resulting from any obligations DOE may incur as a result of signing defective or non-conforming permit applications or submittals prepared by or under the direction of Contractor.

H. Negotiations

DOE may in its discretion choose to be in charge of, and direct, all negotiations with regulatory agencies regarding permits, fines, penalties, and any other proposed notice, notice, administrative order, and any similar type of notice as described in paragraph G above. As directed or required by DOE, the Contractor shall participate in negotiations with regulatory agencies; however, the Contractor shall not make any commitments or offers to regulators purporting to bind or binding the Government in any form or fashion, including monetary obligations, without receiving written authorization or concurrence from the Contracting Officer or his/her authorized representative prior to making such offers/commitments. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Contractor being liable for any excess costs to the Government associated with or resulting from such offers/commitments.

I. Termination, Expiration, Permit Transfer

In the event of expiration or termination of this Contract, DOE may require the Contractor to take all necessary steps to transfer without cost to DOE some or all environmental permits held by the Contractor. DOE will assume responsibility for such permits, with the approval of the regulating agency, and the Contractor shall be relieved

of all liability and responsibility to the extent that such liability and responsibility results from the acts or omissions of a successor Contractor, DOE, or their agents, representatives, or assigns. The Contractor shall remain liable for all unresolved costs, claims, demands, fines and penalties, including reasonable legal costs, arising prior to the date such permits are transferred to another party. Contractor shall not be liable for any such claims occurring after formal transfer unless said claims result from Contractor's action or inaction that occurred prior to transfer.

J. Miscellaneous

The Contractor shall accept assignment or transfer of permits currently held by DOE and its existing Contractor. The Contractor may submit for DOE's consideration, requests for alternate review, comment, or signature schedules for environmental permit applications or other regulatory materials covered by this clause. Any such schedule revision shall be effective only upon written approval from the Contracting Officer.

H.10 EARNED VALUE MANAGEMENT SYSTEM

- A. In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that is recognized as meeting the best business practice guidelines provided in ANSI/EIA-748 Standard, Earned Value Management System.
- B. The Contractor shall apply the system to the contract and shall be prepared to demonstrate to the Contracting Officer that the EVMS meets the guideline referenced in paragraph A of this clause.
- C. The Contracting Officer may require integrated baseline reviews. The objective of the integrated baseline review is for DOE and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks. The Contractor is responsible for evaluation of its system. This includes self-evaluation of the system, conformity with the standard, and notification to the Contracting Officer of any significant system changes.
- D. The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph A of this clause.
- E. The Contractor shall require subcontractors to comply with the requirements of this clause for applicable work scope.

H.11 EMERGENCY CLAUSE

- A. The RL Manager or designee shall have sole discretion to determine when an emergency situation exists at the Hanford Site, except for RPP facilities, affecting site personnel, the public health, safety, the environment, or security. In the event the RL Manager or designee determines such an emergency exists, the RL Manager or designee will have the authority to direct any and all activities of the Contractor and subcontractors necessary to resolve the emergency situation. The RL Manager or designee may direct the activities of the Contractor and subcontractors throughout the duration of the emergency.
- B. The Contractor shall include this clause in all subcontracts at any tier for work performed at the Hanford Site.

H.12 SHUTDOWN AUTHORIZATION

- A. In the event of a specific imminent environmental, health, or safety hazard, identified by facility line management, DOE Facility Representatives, operators, or facility health and safety personnel overseeing facility operations, the individual or group identifying the specific imminent hazard situation should immediately take actions to eliminate or mitigate the hazard. This shall be accomplished by directing the operator/implementer of the activity or process causing the imminent hazard to shutdown the activity or the facility or by initiating emergency response actions or other actions to protect the health and safety of the workers and the public and to protect DOE facilities and the environment. (DOE designated Facility Representatives provide technical oversight of operations to help line management ensure that the facilities are operated in a safe, healthful, and environmentally acceptable manner in accordance with DOE Orders and other requirements. As such, they have “Stop Work” and “Shutdown Authorization” authority.)

In the event an imminent environmental, health, or safety hazard is identified, the individual or group that identified the hazard should coordinate with an appropriate Contractor official, who will direct as needed, broader shutdown actions or other actions, as required. Such mitigating actions should subsequently be coordinated with the RL Manager, the facility/site DOE management, and the facility/site Contractor management. The shutdown direction should be promptly confirmed in writing from the cognizant Contracting Officer.

This authority is in addition to the contract clause entitled “Stop-Work Order – Alternate I.”

- B. In the event of a non-imminent environmental, health, or safety hazard identified by facility line managers, facility operators, health and safety personnel overseeing facility operations, or by independent oversight organizations, the individual or group identifying the potential environmental, health or safety hazard may recommend corrective action or facility shutdown. However, the recommendation must be coordinated with the Contractor management at the facility, the responsible DOE manager, and the RL Manager. Any written direction to shutdown operations will be issued in coordination with the Contracting Officer.
- C. After shutdown, an operation or facility may become operational only after receiving written authorization from the RL Manager, or his delegated authority, in coordination with the Contracting Officer.
- D. The Contractor shall provide in its purchasing system, required under the contract clause entitled "Subcontracts (Cost Reimbursement and Letter Contracts)," for policies, practices, and procedures for the flowdown of appropriate requirements of this clause to subcontractors performing work on-site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described herein.

H.13 RESERVED

H.14 RESERVED

**H.15 INCORPORATION OF REVISED DEPARTMENTAL POLICIES
AND PROCEDURES**

The parties acknowledge that the DOE has undertaken a review of DOE policies and procedures applicable to contracts for management of Government-owned facilities. This review may result in further deletions, additions, or revisions to existing contract clauses, or other DOE regulations, Orders, or Directives which are issued after the effective date of this contract, and which could conflict with or supersede some aspects of this contract. It is the intent of DOE to modify this contract, as necessary, to incorporate these new or revised clauses, regulations, Orders, or Directives or delete requirements no longer needed. This clause does not imply the right of DOE to unilateral modification to the contract except as may be modified pursuant to, "Laws, Regulations, and DOE Directives."

H.16 WITHDRAWAL OF WORK

- A. The Contracting Officer reserves the right to have any of the work contemplated by Section C, Statement of Work, of this contract performed by either another Contractor or to have the work performed by Government employees.
- B. Work may be withdrawn. (1) in order for the Government to conduct pilot programs; (2) if the Contractor's estimated cost of the work is considered unreasonable; (3) for less than satisfactory performance by the Contractor; or (4) for any other reason deemed by the Contracting Officer to be in the best interests of the Government.
- C. If the withdrawn work has been authorized under an annual Work Authorization Directive, the work shall be terminated in accordance with the procedures in the contract clause entitled "Termination (Cost-Reimbursement)."
- D. If any work is withdrawn by the Contracting Officer, the Contractor agrees to fully cooperate with the new performing entity and to provide whatever support is required.

H.17 USE OF DOE FACILITIES

- A. Work for Other Government Agencies
 - (1) DOE may authorize the Contractor to perform non-DOE funded work involving the use of DOE facilities and resources, including Contractor staff, provided that the work is consistent with applicable laws and regulations and satisfies DOE policies regarding mission compatibility and competition with the private and public sectors.
 - (2) When a work request is submitted by a sponsoring, non-DOE entity, the Contractor shall, when requested by DOE:
 - (i) Review the work statement for mission compatibility so as to ensure that the work is consistent with and complementary to the mission of the contract and the facility, will not adversely affect assigned programs, and will not unduly burden mission resources;
 - (ii) Advise the Contracting Officer if the Contractor is aware that performance of the work would result in direct competition with capabilities available in the private or public sectors;

- (iii) Develop a cost estimate for the work to be performed and describe the DOE equipment, facilities, and Contractor staff required to complete the effort; and
 - (iv) Upon receipt of DOE authorization, perform the requested work in accordance with instructions provided by the Contracting Officer.
- (3) The performance of non-DOE funded work shall be subject to the provisions of this contract and to other applicable rules, regulations, and policies as may be specifically directed to the Contractor's attention by the Contracting Officer.

B. Work for Non-Government Entities

The Contractor may also propose the use of Government-owned facilities, equipment and other property on a non-interference basis for private work and private work for other entities. The Contractor agrees to reimburse DOE for such use either on a full-cost recovery basis at rates approved by the Contracting Officer or such other basis consistent with federal law, and as approved by the Contracting Officer.

C. Local Community Assistance

The Contractor may conduct programs of local community assistance to mitigate adverse impacts of closure or reconfiguration of DOE facilities. Such programs may provide for the lease or transfer of DOE property at less than fair market value in accordance with the Hall Amendment (Public Law 103-160, Sections 3154 and 3155). Any lease or transfer of DOE property under this program must be prior-approved in writing by the Contracting Officer.

H.18 WORK FOR OTHERS FUNDING AUTHORIZATION

The Contractor is permitted to provide advanced payment using Contractor funds for reimbursable work to be performed by the Contractor for non-Federal entities in instances where advanced payment from that entity is required pursuant to DOE policy and such an advance cannot be obtained by DOE. The Contractor is also permitted to provide advanced continuation funding using Contractor funds for Federal entities when the term or the funds on a Federal interagency agreement have elapsed. Any uncollectible receivables resulting from the Contractor using its own funding shall be the responsibility of the Contractor, and the United States Government shall not have any liability to the Contractor therefor.

H.19 MAKE-OR-BUY PROGRAM/ SUBCONTRACTS CONSENT AND CONTRACT CLAUSE FLOW DOWN REQUIREMENTS

A. Definitions

- (1) “Buy item” means a unit of work effort or a requirement to be produced or performed by an outside source, including a subcontractor or an affiliate, subsidiary, or division of the Contractor.

“Make item” means a unit of work effort or a requirement to be produced or performed by the Contractor using its personnel and other resources at the DOE facility or site.

“Master make-or-buy program” means a Contractor’s written program for the contract that identifies work efforts that either are “make items” or “buy items.”

B. Make-or-Buy Program

- (1) Master Make-or-Buy Program. The Contractor shall initiate, develop, or adopt a Master Make-or-Buy Program that establishes a preference for buying items and work effort on a least cost basis, subject to specific DOE make-or-buy criteria identified in this contract or otherwise provided by the Contracting Officer. The Contractor shall submit for approval a plan documenting the Master Make-or-Buy Program.
- (2) Implementation. Once the Master Make-or-Buy Plan is approved, the Contractor shall perform in accordance with the Master Make-or-Buy Plan.
- (3) Submission and approval. The Contractor shall submit the Master Make-or-Buy Plan as part of its Economic Transition and Outsourcing Plan for approval by December 1, 1996.

The following documentation shall be prepared and submitted:

- (a) A description of each major work item, and if appropriate, the identification of the associated Work Authorization or Work Breakdown Structure element;
- (b) The categorization of each work item as “must make,” “must buy,” or “can make or buy,” with the reasons for such categorization in consideration of the program-specific make or buy criteria (including least

cost considerations). For items categorized as “must make,” a cost/benefit analysis must be performed for each item;

- (c) A decision to either “make” or “buy” in consideration of the program-specific make or buy criteria (including least cost considerations) for work effort categorized as “can make or buy;”
 - (d) Identification of proposed suppliers and subcontractors, if known, and their location and size status;
 - (e) A recommendation to defer make or buy decisions where categorization of identifiable work effort(s) is impracticable at the time of initial development of the Master Make-or-Buy Plan;
 - (f) The impact of a change in current make-or-buy practices on the existing workforce;
 - (g) Any additional information appropriate to support and explain the Master Make-or-Buy Plan; and
 - (h) To the maximum extent possible, the use of fixed-price subcontracts.
- (4) Changes to the Master Make-or-Buy Plan. The Master Make-or-Buy Plan established in accordance with paragraph (4) above, shall remain in effect for the term of the contract, unless: (1) a lesser period is provided either for the total Master Make-or-Buy Plan or for individual items or work effort; or (2) the circumstances supporting the original make-or-buy decisions change subsequent to the initial approval. At least annually, the Contractor shall review the approved Master Make-or-Buy Plan to ensure that it reflects current conditions.

Changes to the approved Master Make-or-Buy Plan shall be submitted to RL in advance of the proposed effective date of the change in sufficient time to permit review and evaluation. All changes shall be submitted in accordance with instructions provided by the Contracting Officer. Modification of the Master Make-or-Buy Plan to incorporate proposed changes or additions shall be effective upon the Contractor’s receipt of the Contracting Officer’s written approval.

- C. The Contractor shall include paragraphs A and B of this clause in all subcontracts with Major Subcontractors, altering the clause only as necessary to identify properly the contracting parties.

- D. Prior to the placement of subcontracts and in accordance with the contract clause entitled “Subcontracts (Cost Reimbursement and Letter Contracts), the Contractor shall ensure the following:
- (1) The subcontracts contain all of the clauses of this contract (altered when necessary for proper identification of the contracting parties) which contain a requirement for such inclusion in applicable subcontracts. Particular attention should be directed to the potential flow down applicability of the clauses entitled “Utilization of Small Business Concerns “ and “Small Business Subcontracting Plan” contained in PART II, Section I, of the contract;
 - (2) Any applicable subcontractor Certificate of Current Cost or Pricing Data (see FAR 15.403-4) and subcontractor Representations and Certifications are completed (see the document referenced in the contract clause entitled “Representations and Certifications”); and
 - (3) Any required prior notice and description of the subcontract is given to the Contracting Officer, and any required consent is received. Except as may be expressly set forth therein, any consent by the Contracting Officer to the placement of subcontracts shall not be construed to constitute approval of the subcontractor or any subcontract terms or conditions, determination of the allowability of any cost, revision of this contract or any of the respective obligations of the parties thereunder, or creation of any subcontractor privity of contract with the Government.
- E. The Contractor shall also obtain and furnish to the Contracting Officer either an Organizational Conflict of Interest (OCI) Disclosure Statement or Representation form in accordance with DEAR 909.570-7, “Disclosure or representation,” from all subcontractors to be used under this contract to perform the types of work identified in DEAR 909.570-4(b). No work shall be performed by the subcontractor until the Contracting Officer has cleared the subcontractor for OCI.
- F. The Contractor shall ensure that all cost-reimbursable type subcontracts placed for a total amount which exceeds \$5 million shall have incentive provisions based on performance measurements, criteria, and success factors.
- G. In compliance with the Government’s initiative of “Streamlining Procurement Through Electronic Commerce,” and presenting a “singleface” to industry, the Contractor shall strive to implement, within available funding, an Electronic Commerce System that will generate a paperless, automated, integrated procurement/payment system. This system shall, to the maximum practicable extent, subject to DOE approval, allow for electronic

request for quotations, quotations, purchase orders, electronic invoices, and remittance advices; full integration between the procurement, receiving, inventory control and accounting systems; and accounting system programs that compare invoices, receipts, and orders and automatically issue electronic funds transfer payments.

H.20 LIMITATION ON SUBCONTRACTOR PERIOD OF PERFORMANCE

Subcontracts awarded under this contract with Major Subcontractors shall be limited to 2 years, with options for up to 3 additional years (as appropriate), unless awarded on a fixed-price competitive basis. In addition, cost reimbursable subcontracts estimated to exceed \$5,000,000 shall be subject to this limitation unless otherwise approved by DOE. This limitation shall apply to other subcontracts as identified from time to time by the DOE. The Contractor shall include the contract clause entitled, Exercise of Option(s), in its entirety, in all subcontracts awarded subject to this limitation. If at the Government's option the contract is extended for an additional period beyond the initial five year period, then Major Subcontractors whose performance warrants may be extended for an additional two year period with options for up to an additional three years.

H.21 ASSIGNMENT OF SUBCONTRACTS

- A. Existing subcontractor contractual agreements (exclusive of the WHC subcontracts with ICF Kaiser Engineers Hanford and Boeing Computer Services Richland), unless otherwise determined by DOE, shall be assigned to the successor Contractor effective October 1, 1996. The subcontractor contractual agreements shall include all (1) subcontracts and purchase orders, (2) agreements with domestic and foreign research organizations, (3) agreements with universities and colleges, and (4) other similar agreements. This assignment does not include any collective bargaining agreements the predecessor Contractor may have with certified collective bargaining agents.
- B. The Government reserves the right to direct the Contractor to assign to the Government or another Contractor any subcontract awarded under this contract, including sub-tier subcontracts.

H.22 INFORMATION

A. Management of Information Resources

The Contractor shall design and implement Information Resources Management (IRM) capabilities for the Hanford Site in accordance with the Office of Management and Budget (OMB) Circular A-130, Management of Federal Information Resources. The

Contractor shall flow down the provisions of OMB Circular A-130 to all Major Subcontractors.

B. Release of Information

- (1) Working with the RL Office of External Affairs (OEA) and the Records Manager when appropriate, the Contractor shall be responsible for developing, planning, and coordinating proactive approaches to timely dissemination of information regarding DOE unclassified activities onsite and offsite.
- (2) The Contractor shall be responsible for following DOE guidelines and/or procedures for all oral, written and audio/visual information material prepared for public use, including technical information.

C. Unclassified, Controlled, Nuclear Information (UCNI)

Documents originated by the Contractor or furnished by the Government to the Contractor, in connection with this contract, may contain Unclassified, Controlled, Nuclear Information as determined pursuant to Section 148 of the Atomic Energy Act of 1954, as amended. The Contractor shall be responsible for protecting such information from unauthorized dissemination in accordance with DOE regulations and directives and the contract clauses entitled "Security" and "Classification/Declassification."

D. Confidentiality of Information

To the extent that the work under this contract requires that the Contractor be given access to confidential or proprietary business, technical, or financial information belonging to the Government or other companies, the Contractor shall, after receipt thereof, treat such information as confidential and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized by the Contracting Officer in writing. The foregoing obligations, however, shall not apply to:

- (1) Information which, at the time of receipt by the Contractor, is in the public domain;
- (2) Information which is published after receipt thereof by the Contractor or otherwise becomes part of the public domain through no fault of the Contractor;

- (3) Information which the Contractor can demonstrate was in its possession at the time of receipt thereof and was not acquired directly or indirectly from the Government or other companies;
- (4) Information which the Contractor can demonstrate was received by it from a third party who did not require the Contractor to hold it in confidence.

The Contractor shall obtain the written agreement, in a form satisfactory to the Contracting Officer, of each employee permitted access to such information, whereby the employee agrees that he will not discuss, divulge or disclose any such information or data to any person or entity except those persons within the Contractor's organization directly concerned with the performance of the contract.

The Contractor agrees, if requested by the Government, to sign an agreement identical, in all material respects, to the provisions of this subparagraph D., with each company supplying information to the Contractor under this contract, and to supply a copy of such agreement to the Contracting Officer. From time to time upon request of the Contracting Officer, the Contractor shall supply the Government with reports itemizing information received as confidential or proprietary and setting forth the company or companies from which the Contractor received such information.

The Contractor agrees that upon request by DOE, it will execute a DOE-approved agreement with any party whose facilities or proprietary data it is given access to or is furnished, restricting use and disclosure of the data or the information obtained from the facilities. Upon request by DOE, such an agreement shall also be signed by Contractor personnel.

- E. The Government reserves the right to require the Contractor to include this clause or a modified version of this clause in any subcontract as directed in writing by the Contracting Officer.

H.23 OWNERSHIP OF RECORDS

A. Government's Records

Except as provided in paragraph B of this clause, all records acquired or generated by the Contractor in its performance of this contract shall be the property of the Government and shall be delivered to the Government or otherwise disposed of by the Contractor either as the Contracting Officer may from time to time direct during the process of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of the

contract. Privileged and confidential legal documents prepared by or for Contractors that are not reimbursed under the contract are excluded.

All occupational health records generated during the performance of Hanford-related activities will be maintained by the Hanford Environmental Health Foundation (HEHF) and are the property of DOE.

All radiation exposure records generated during the performance of Hanford-related activities will be maintained by the Pacific Northwest National Laboratory (PNNL) and are the property of DOE.

B. Contractor's Own Records

The following records are considered the property of the Contractor and are not within the scope of paragraph A above:

- (1) Employment-related records such as the following:
 - Personnel files maintained on current individual employees, or Major Subcontractor employees
 - Files maintained on applicants, or Major Subcontractor applicants
 - Qualifications or suitability for employment
 - Allegations, investigations, and resolution of employee misconduct
 - Employee discipline
 - Records on salary and employee benefits
 - Labor negotiations records
 - Employee concern program records
 - Employee assistance program records
- (2) Confidential Contractor financial information, and correspondence between the Contractor and other segments of the Contractor located away from the DOE facility (i.e., the Contractor's corporate headquarters);
- (3) Records relating to any procurement action by the Contractor, except for records that under 48 CFR (DEAR) 970.5204-9, Accounts, Records, and Inspection, are described as the property of the Government; and
- (4) The following categories of records maintained pursuant to the technology transfer clause of this contract:

- (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
- (ii) The Contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
- (iii) Patent, copyright, mask work, and trademark application files and related Contractor invention disclosures, documents and correspondence, where the Contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.

C. Contract Completion or Termination

In the event of completion or termination of this contract, copies of any of the Contractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor Contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.

D. Inspection, Copying, and Audit of Records

All records acquired or generated by the Contractor under this contract in the possession of the Contractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Contractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the Contracting Officer, the Contractor shall deliver such records to a location specified by the Contracting Officer for inspection, copying, and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.

E. Applicability

Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.

F. Records Retention Standards

Special records retention standards, described at DOE Order 1324.5B, Records Management Program and DOE Records Schedules (version in effect on effective date of contract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Contractor. The Government may waive application of these record retention schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.

G. Flow Down

The Contractor shall include the requirements of this clause in all subcontracts that are of a cost-reimbursement type if any of the following factors is present:

- (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the Contracting Officer);
- (2) The Contracting Officer determines that the subcontract is, or involves, a critical task related to the contract; or
- (3) The subcontract includes 48 CFR (DEAR) 970.5204-2, Integration of Environment, Safety, and Health into Work Planning and Execution, or similar clause.

H.24 PRIVACY ACT SYSTEMS OF RECORDS

- A. The Contractor shall design, develop, or adopt the following systems of records on individuals to accomplish an agency function pursuant to the contract clause entitled "Privacy Act."

<u>System No.</u>	<u>Title</u>
DOE-5	Personnel Records of Former Contractor Employees
DOE-11	Emergency Locator Records
DOE-13	Payroll & Locator Records
DOE-14	Report of Compensation
DOE-15	Payroll & Pay-Related Data for Employees of Terminated Contractors
DOE-23	Richland Property System
DOE-28	General Training Records

DOE-31	Firearms Qualifications Requirements
DOE-32	Gov't Motor Vehicle Operator Records
DOE-33	Personnel Medical Records
DOE-35	Personnel Radiation Exposure Records
DOE-40	Contractor Employees Insurance Claims
DOE-43	Personnel Security File
DOE-47	Security Investigations
DOE-51	Employee and Visitor Access Control Records
DOE-53	Access Authorization for ADP Equipment
DOE-58	General Correspondence Files
DOE-81	Counterintelligence Administrative and Analytical Reports
DOE-84	Counterintelligence Investigative Records

- B. The above list shall be revised from time to time by mutual agreement between the Contractor and the Contracting Officer as necessary to keep it current. A formal modification to the contract is not required to incorporate these revisions; but, the revisions become effective upon mutual agreement of the parties. The mutually agreed upon revisions shall have the same effect as if actually listed above for the purpose of satisfying the listing requirement contained in paragraph (a)(1) of the contract clause entitled "Privacy Act." The revisions will be formally incorporated per the next annual contract update modification, unless added sooner by the Contracting Officer.

H.25 PAYMENTS AND ADVANCES

A. Payment of Fee Amounts Earned

Fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No fee payments may be withdrawn against the letter-of-credit without prior written approval of the Contracting Officer.

B. Payments on Account of Allowable Costs

Allowable costs, determined in accordance with the cost principles in Subpart 31.2 of the Federal Acquisition Regulation (FAR) as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR), and other items as approved in writing by the Contracting Officer, shall be made from advances of Government funds limited by Section B.2. "Obligation of Funds." When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs

therefore shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

C. Final FDH Incurred Cost Submittal

Proposed charge-out rates for the following fiscal year will be submitted each year in accordance with direction provided in the Baseline Updating Guidance issued in the spring of each year pertaining to the subsequent execution year and outyears.

- (1) The Contractor shall submit an adequate final incurred cost submittal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.
 - (i) The submitted cost shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates incurred costs as promptly as practical after receipt of the Contractor's proposal.
 - (ii) Failure by the parties to agree on final annual incurred cost shall be a dispute within the meaning of the Disputes clause.
- (2) Quick-closeout procedures. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.

D. Special Financial Institution Account Use

All advances of Government funds shall be withdrawn pursuant to a letter-of-credit in favor of the bank or, at the option of the Government, shall be made by direct payment or any other payment mechanism to the Contractor, and shall be deposited only in the Special Demand Deposit Account referred to in the Special Bank Account Agreement, which is incorporated into this contract included in Section J. No part of the funds in the Special Demand Deposit Account shall be (1) commingled with any funds of the Contractor or (2) used for a purpose other than that of making payments for costs allowable and, if approved, fees earned under this contract or payments for other items

specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such Special Demand Deposit Account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.

E. Title to Funds Advanced

Title to the unexpended balance of any funds advanced and of any Special Demand Deposit Account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the bank of deposit or others. It is understood that an advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

F. Certification and Penalties

The Contractor shall prepare and submit a monthly voucher for the total of costs incurred and accrued for the period covered by the voucher. It is anticipated that this will be a monthly submission unless otherwise agreed to by the Contracting Officer. Vouchers must be formatted in a manner approved by the Contracting Officer. Along with Accompanying the annual final indirect incurred cost submission the Contractor shall provide a certification subject to the penalty provisions for unallowable costs as stated in the contract clause, "52.242-3, Penalties for Unallowable Costs."

G. Financial Settlement

The Government shall promptly pay to the Contractor the unpaid balance of allowable costs and earned fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after (1) compliance by the Contractor with DOE's patent clearance requirements, and (2) the furnishing by the Contractor of:

- (1) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under this contract;
- (2) A closing financial statement;

- (3) The accounting for Government-owned property required by the clause entitled "Property;" and
- (4) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
 - (a) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
 - (b) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor should provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also the contract clause entitled, "Insurance-Litigation and Claims");
 - (c) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and
 - (d) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

In arriving at the amount due the Contractor under this clause, there shall be deducted, (1) any claim which the Government may have against the Contractor in connection with this contract, and (2) deductions due under the term of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Demand Deposit Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

H. Claims

Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification, as the Contracting Officer shall prescribe.

I. Discounts

The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.

J. Collections

All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer and, to the extent consistent with those requirements, shall be deposited in the Special Demand Deposit Account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.

K. Direct Payment of Charges

The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.

H.26 ASSIGNMENT OF DOE PRIME CONTRACTS

During the period of performance of this contract it may become necessary for the U.S. Department of Energy (DOE) to transfer and assign (and Contractor agrees to accept) existing or future DOE prime contracts supporting site work to this contract. The transfer of these prime contracts will be for administration purposes and in effect the transferred contracts will become subcontracts to this contract. Details of the transfer will be determined by the DOE prior to the transfer. Any recommendations and/or suggestions on individual transfers should be submitted in writing to the Contracting Officer prior to the transfer or assignment.

H.27 GOVERNMENT-OWNED PROPERTY

During the contract period of performance, the Contractor will continue to be accountable for all existing and acquired Government-owned property recordable in the Richland Property System and all special nuclear material as identified in the Nuclear Material Management and

Safeguards System. In addition, the Contractor will be responsible for updating these systems to reflect changes in property or special nuclear materials inventory.

H.28 ADVANCE UNDERSTANDING ON PERSONNEL COSTS, POLICIES AND PROCEDURES

The DOE has reached an advance understanding with the Contractor on certain personnel costs, related expenses, policies, and procedures. These costs are those associated with personnel policies and procedures which the Contractor will apply to work under this contract. Advance review by DOE and written approval by the Contracting Officer of such personnel policies and procedures is required. Any exceptions noted in the Contracting Officer's written approval will govern the Contractor's application of the personnel policies and procedures under this contract. Any deviation from the personnel policies and procedures so approved must have DOE approval before costs occasioned thereby will be considered allowable (either direct or indirect) under the subject contract. In addition, DOE approval will be required for total annual compensation paid to each person designated as Key Personnel and identified in the contract clause entitled "Key Personnel," exclusive of bonus or incentive compensation pay which will not be an allowable cost under this contract. The Advance Understanding will be part of this contract and included in Section J.

H.29 LEGAL DEFENSE AND REIMBURSEMENT OF CONTRACTOR PROTECTIVE FORCE OFFICERS

- A. It is Government policy to have the Contractor defend any Contractor or subcontractor protective force officer if a claim or legal action is brought against the employee as a result of that employee's conduct while performing duties undertaken by the employee in good faith for the purpose of accomplishing and fulfilling the official duties of his/her employment. The prior approval of the Contracting Officer shall be obtained before any such defense is undertaken.
- B. When involved in any claim or legal action covered by this clause, an employee may, with prior approval of the Contracting Officer, be allowed time off with basic pay on scheduled workdays for consultation with counsel, trial attendance, and other matters as are reasonably incident to the claim or legal action.

H.30 RESERVED

H.31 RESERVED

H.32 RETRAINING FOR DISPLACED EMPLOYEES

- A. Salaried and hourly employees whose jobs are likely to be eliminated due to changes in the Contractor's scope of work, budgetary reductions, or efficiencies in performing the mission who are covered by the terms of section 3161 may be offered opportunities for retraining. Retraining programs will be designed to provide occupational skills which are in demand by the Contractor or by other employers locally, regionally, or nationally, as appropriate. Tuition payments for courses to qualify displaced employees for outside employment may be approved by the Contractor. Retraining for outside employment may be conducted during working hours under programs approved by DOE.
- B. When actual or potential employment termination is the result of a work force restructuring plan prepared by the Department pursuant to section 3161, the Contractor shall comply with the DOE approved plan. This plan may prescribe funding amounts for retraining eligible workers for new Contractor jobs in environmental cleanup, and may prescribe funding amounts and procedures for providing displaced workers with tuition reimbursement for training or education that will assist the transition to new careers.

H.33 TRANSFER-RELOCATION ALLOWANCE

- A. An allowance for transfers and relocations accomplished pursuant to section 3161 may be reimbursed with an outbound and an inbound allowance not to exceed the employee's receipted expenses up to 4-1/3 weeks salary, except that a flat amount not to exceed one thousand dollars (\$1,000.00) may be allowed in lieu of receipted expenses.
- B. When actual or potential employment termination is the result of a work force restructuring plan prepared by the Department pursuant to section 3161, the Contractor shall comply with the plan. This plan may prescribe funding amounts for relocating an eligible employee to another company at another DOE site when the employee does not qualify for relocation assistance under the hiring Contractor's policies.

H.34 LABOR RELATIONS

- A. The Contractor, or its Major Subcontractors, will respect the rights of employees (1) to organize, form, join, or assist labor organizations; bargain collectively through representatives of the employees own choosing; and engage in other protected concerted activities for the purpose of collective bargaining, or (2) to refrain from such activities.

- B. To the extent required by law, the Contractor or its Major Subcontractors shall give notice to any lawfully designated representative of its employees for purposes of collective bargaining and, upon proper request, bargain to good faith impasses or agreement, or otherwise satisfy applicable bargaining obligations.
- C. The Contractor shall promptly advise the Contracting Officer of, and provide all appropriate documentation regarding, any labor relations developments at the prime or subcontract level that involve or appear likely to involve:
- (1) Possible strike situations affecting the facility;
 - (2) Referral to the Energy Labor-Management Relations Panel;
 - (3) The National Labor Relations Board at any level;
 - (4) Recourse to procedures under the Labor-Management Act of 1947, as amended, or any other Federal or state labor law; or
 - (5) Any grievance that may reasonably be assumed to be arbitrated under a Collective Bargaining Agreement.
- D. Cost of wages and fringe benefits, to employees represented by collective bargaining units, not in excess of those provided in the collective bargaining agreements listed below, shall be allowable. The costs associated with grievance processing and settlements, arbitration, and arbitration awards shall be allowable in accordance with the provisions of the contract clause entitled "Insurance - Litigation and Claims." All other costs and expenses incurred pursuant to the provision of the collective bargaining agreements and revisions thereto listed below are allowable costs hereunder.

H.35 DETERMINATION OF APPROPRIATE LABOR STANDARDS

DOE shall determine the appropriate labor standards in accordance with the Davis-Bacon Act, which shall apply to work performed under this contract. Where requested by DOE, the Contractor shall provide such information in the form and timeframe required by DOE, as may be necessary for DOE to make such labor standards determinations. The Contractor will then be responsible for ensuring that the appropriate labor standards provisions are included in subcontracts.

H.36 SERVICE CONTRACT ACT (SCA) WAGE DETERMINATION

For any subcontract subject wholly or in part to the provisions of the McNamara-O'Hara Service Contract Act (SCA), the Contractor shall require the subcontractor to pay service employees employed thereunder no less than the minimum wage and fringe benefits set forth in the applicable currently effective wage determination(s). Prior to the beginning of each contract year/option period, the agency Contracting Officer shall file a request for a revised wage determination (WD) with the U.S. Department of Labor. Any revised WD received shall be incorporated into the affected subcontract by modification.

H.37 HANFORD SITE STABILIZATION AGREEMENT

- A. The Site Stabilization Agreement for all construction work for the DOE at the Hanford Site consists of a Basic Agreement dated September 10, 1984, plus an Appendix A. (The Site Stabilization Agreement is available in the DOE Public Reading Room. The Site Stabilization Agreement will be made a part of this contract by reference upon award. The Contractor shall be required to comply with the most current Site Stabilization Agreement, and as modified throughout performance of the contract.)
- B. This clause applies to employees performing work under RL contracts or subcontracts subject to the Davis-Bacon Act, in the classifications set forth in the Site Stabilization Agreement for work performed at the Hanford Site.
- C. Contractors and subcontractors at all tiers who are parties to an agreement(s) for construction work with a Local Union having jurisdiction over RL construction work performed at the Hanford Site, or who are parties to a national labor agreement for such construction work, shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A. Subcontractors at all tiers who have subcontracts with a signatory Contractor or subcontractor shall become signatory to the Site Stabilization Agreement and shall abide by all of its provisions, including its Appendix A.
- D. Contractors and subcontractors at all tiers who are not signatory to the Site Stabilization Agreement and who are not required under paragraph C above to become signatory to the Site Stabilization Agreement shall pay not less and no more than the wages, fringe benefits, and other employee compensation set forth in Appendix A and shall adhere, except as otherwise directed by the Contracting Officer, to the following provisions of the Site Stabilization Agreement:
 - 1. Article VII Employment, Section 2 only

2. Article XII Non-Signatory Contractor Requirements
 3. Article XIII Hours of Work, Shifts, and Overtime
 4. Article XIV Holidays
 5. Article XV Wage Scales and Fringe Benefits,
Sections 1 & 2 only
 6. Article XVII Payment of Wages-Checking In & Out,
Section 3 only
 7. Article XX General Working Conditions
 8. Article XXI Safety and Health
- E. The Contractor agrees to make no contributions in connection with this contract to Industry Promotion Funds, or similar funds, except with the prior approval of the Contracting Officer.
- F. The obligation of the Contractor and its subcontractors to pay fringe benefits shall be discharged by making payments required by this contract in accordance with the provisions of the amendments to the Davis-Bacon Act contained in the Act of July 2, 1964, (Public Law 88-349-78 Stat. 238-239) and the Department of Labor regulations in implementation thereof (29 CFR, Parts 1,3,5).
- G. The Contracting Officer may direct the Contractor to pay amounts for wages, fringe benefits, and other employee compensation if the Site Stabilization Agreement, including its Appendix A, is modified by the involved parties.
- H. (1) In the event of failure to comply with paragraphs C, D, E, F, and G above, or failure to perform any of the obligations imposed upon the Contractor and its subcontractors, the Contracting Officer may withhold any payments due to the Contractor and may terminate the contract for default.
- (2) The rights and remedies of the Government provided in this paragraph (1) above shall not be exclusive and are in addition to any other rights and remedies of the Government provided by law or under this contract.
- I. The requirements of this paragraph are in addition to, and shall not relieve the Contractor of any obligation imposed by other clauses of this contract, including those entitled

“Davis-Bacon Act,” “Contract Work Hours and Safety Standards Act-Overtime Compensation,” “Payrolls and Basic Records,” “Compliance with Copeland Act Requirements,” “Withholding of Funds,” and “Contract Termination-Debarment.”

- J. The Contractor agrees to maintain its bid or proposal records showing rates and amounts used for computing wages and other compensation, and its payroll and personnel records during the course of work subject to this paragraph, and to preserve such records for a period of 3 years thereafter for all employees performing such work. Such records will contain the name, address, social security number of each such employee, correct classification, rate of pay, daily and weekly number of hours worked, and dates and hours of the day within which work was performed, deductions made, and amounts for wages and other compensation covered by paragraphs C, D, E, F, and G. of this contract clause. The Contractor agrees to make these records available for inspection by the Contracting Officer and will permit employee interviews during working hours on the job.
- K. The Contractor agrees to insert this clause, including this paragraph K, in all subcontracts for the performance of work subject to the Davis-Bacon Act.

H.38 INSURANCE - LITIGATION AND CLAIMS

- A. The Contractor may, with the prior written authorization of the Contracting Officer or its designee, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The Contractor shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer or its designee.
- B. The Contractor shall give the Contracting Officer and Chief Counsel RL, immediate notice in writing of any legal proceeding, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract. Except as otherwise directed by the Contracting Officer or its designee in writing, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action. The Contractor, with the prior written authorization of the Contracting Officer or its designee, shall proceed with such litigation in good faith and as directed from time to time by the Contracting Officer or its designee.
- C. (1) Except as provided in paragraph C (2) of this clause, the Contractor shall procure and maintain such bonds and insurance as required by law or approved in writing by the Contracting Officer.

- (2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.
 - (3) All bonds and insurance required by this clause shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with sureties and insurers approved by the Contracting Officer.
- D. The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner directed by the Contracting Officer, any other bonds and insurance that are maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement. If an insurance cost (whether a premium for commercial insurance or related to self-insurance) includes a portion covering costs made unallowable elsewhere in the contract, and the share of the cost for coverage for the unallowable cost is determinable, the portion of the cost that is otherwise an allowable cost under this contract is reimbursable to the extent determined by the Contracting Officer.
- E. Except as provided in subparagraphs G and H of this clause or specifically disallowed elsewhere in this contract; the Contractor shall be reimbursed:
- (1) For that portion of the reasonable cost of bonds and insurance allocable to this contract required in accordance with contract terms or approved under this clause and
 - (2) For liabilities (and reasonable expenses incidental to such liabilities, including litigation costs) to third persons not compensated by insurance or otherwise without regard to, and as an exception to the clause of this contract entitled "Obligation of Funds."
- F. The Government's liability under paragraph E of this clause is subject to the availability of appropriated funds. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.
- G. Notwithstanding any other provision of this clause, the Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities, including litigation costs, counsel fees, judgment and settlements):
- (1) Which are otherwise unallowable by law or the provisions of this contract;

- (2) For which the Contractor has failed to insure or to maintain insurance as required by law, this contract, or by written direction of the Contracting Officer.
- H.
- (1) In addition to the cost reimbursement limitations contained in DEAR 970.3103-3, and notwithstanding any other provision of this contract, the Contractor's liabilities to third persons, including employees but excluding costs incidental to workers' compensation actions, (and any expenses incidental to such liabilities, including litigation costs, counsel fees, judgments and settlements) shall not be reimbursed if such liabilities were caused by Contractor managerial personnel's.
 - (i) Willful misconduct
 - (ii) Lack of good faith, or
 - (iii) Failure to exercise prudent business judgment, which means failure to act in the same manner as a prudent person in the conduct of competitive business; or, in the case of a non-profit educational institution, failure to act in the manner that a prudent person would under the circumstances prevailing at the time the decision to incur the cost is made.
 - (2) Any costs incurred by the Contractor which are affirmatively established as the direct result of the actions of the Yakama Indian Nation (YIN) performing Fisheries Resource Management (FRM) Program activities shall be deemed allowable costs and reimbursable under the PHMC contract. This authorization relieves the Contractor from obtaining all Government approvals required for the activities conducted by YIN FRM Program; it does not however relieve the Contractor from obtaining all Government approvals required for PHMC activities conducted pursuant to DOE direction.
- I. The burden of proof shall be upon the Contractor to establish that costs covered by paragraph H of this clause are allowable and reasonable if, after an initial review of the facts, the Contracting Officer challenges a specific cost or informs the Contractor that there is reason to believe that the cost results from willful misconduct, lack of good faith, or failure to exercise prudent business judgment by Contractor managerial personnel.
- J.
- (1) All litigation costs, including counsel fees, judgments and settlements shall be differentiated and accounted for by the Contractor so as to be separately identifiable. If the Contracting Officer provisionally disallows such costs, then the Contractor may not use funds advanced by DOE under the contract to finance the litigation.

- (2) Punitive damages are not allowable unless the act or failure to act which gave rise to the liability resulted from compliance with specific terms and conditions of the contract or written instructions from the Contracting Officer.
- (3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of liabilities referred to in paragraph (g) (1) of this clause is not allowable.
- (4) The term "Contractor's managerial personnel" is defined in clause paragraph (j) of 48 CFR (DEAR) 970.5204-21.
- (5) The Contractor may, at its own expense and not as an allowable cost, procure for its own protection insurance to compensate the Contractor for any unallowable or unreimbursable costs incurred in connection with contract performance.

K. If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall:

- (1) Immediately notify the Contracting Officer or its designee and promptly furnish copies of all pertinent papers received;
- (2) Authorize Department representatives to collaborate with,; in-house or DOE-approved outside counsel in settling or defending the claim; or counsel for the insurance carrier in settling or defending the claim if the amount of the liability claimed exceeds the amount of coverage, unless precluded by the terms of the insurance contract; and,
- (3) Authorize Department representatives to settle the claim or to defend or represent the Contractor in and/or to take charge of any litigation, if required by the Department, if the liability is not insured or covered by bond. In any action against more than one Department Contractor, the Department may require the Contractor to be represented by common counsel. Counsel for the Contractor may, at the Contractor's own expense, be associated with the Department representatives in any such claim or litigation.

H.39 FINANCIAL MANAGEMENT SYSTEM

- A. The Contractor's accounting system must have the electronic capability to generate and transmit by acceptable mode, the periodic detailed accounting information, at a minimum monthly and at year-end, to the DOE's Primary Accounting System for reporting financial activity under this contract in accordance with DOE requirements.
- B. The Contractor shall maintain and administer a financial management system as described in the Management and Integration Plan that (1) is suitable to provide proper accounting in accordance with Generally Accepted Accounting Principles, and Cost Accounting Standards, except as modified by DOE requirements; (2) provides accurate and reliable financial and statistical data on a timely basis; (3) ensures accountability for all assets; (4) supports financial planning and budget formulation, validation, execution, and the recasting or changing of DOE funding or task codes such as Budget and Reporting Numbers (B&R), activity data sheet numbers (ADS), and local projects/tasks; (5) maintains proper funding authorization; (6) provides sufficient management controls per DEAR 970.5204-20 MANAGEMENT CONTROLS, and internal controls; (7) integrates and reports the financial information for subcontractors; and (8) provides all other necessary financial reports, which shall include accumulating and reporting indirect and support costs by function. The Contractor will be requested, periodically, to provide certain functional cost information not normally provided to DOE on a routine basis, but should be otherwise available through query of the Contractor's accounting system.
- C. The Contractor will assume existing responsibilities for accounting control of special nuclear materials. The Contractor will continue to operate the classified Departmental Inventory Management System (DIMS), which reports the financial aspects of special nuclear material inventory changes and status.
- D. The Contractor shall submit a plan for DOE approval of any substantive change to the financial management system or subsystems at least 60 days in advance of implementation. This plan must identify the cost and schedule for changing from the existing financial systems, and provide a comparison of the capabilities of the new system(s) to the existing system(s).
- E. The financial management systems of Major Subcontractors shall have the same level of detail required of the Contractor and be consistent with the requirements of this clause.

H.40 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS

A. Definitions

- (1) Adverse Determination means.
 - (i) A judgement of liability against the Contractor and in favor of the employee in an action in a judicial forum;
 - (ii) A recommended decision under 29 CFR 24.6 by an Administrative Law Judge that the Contractor has violated the employee provisions of the statutes or executive orders for which the Secretary of Labor has been assigned enforcement responsibility;
 - (iii) An initial agency decision, under 10 CFR 708.10 that the Contractor has engaged in conduct prohibited by 10 CFR 708.5;
 - (iv) Any decision against the Contractor by the head of an executive agency under § 6006 of the Federal Acquisition Streamlining Act, Pub. L. 103-355 (adding section 315 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251, *et seq.*), see paragraph C);
- (2) Retaliatory or Discriminatory Acts mean(s) discharge, demotion, reduction in pay, coercion, restraint, threats, intimidation or other similar negative action taken against an employee by the Contractor during the term of this contract as a result of activities protected by the statutes enumerated in 29 CFR 24.1(a) or as a result of the employee's disclosure of information, participation in a proceeding or refusal to engage in illegal or dangerous activities as set forth in 10 CFR 708.5(a).
- (3) Employee Action means an action filed in Federal or state court for redress of retaliatory or discriminatory action by the Contractor, any administrative procedure brought by an employee or federal agency under 29 CFR Part 24, or any other complaint filed against the Contractor for retaliatory or discriminatory acts under 10 CFR Part 708 by an employee of any other Contractor or subcontractor which is cognizable under 10 CFR 708.
- (4) Litigation Costs include attorney, consultant, and expert witness fees, but exclude costs of settlements and judgements.

- B. All costs incurred in the investigation and/or defense of an employee action under this contract clause shall be differentiated and accounted for by the Contractor so as to be separately identifiable. Subsequent to an adverse determination, such costs, as well as costs associated with any interim relief which may be granted, may not be paid from any advanced funding provided pursuant to this contract. Notwithstanding the foregoing, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provisions of adequate security, or other adequate assurance, and agreements by the Contractor to repay all litigation costs incurred subsequent to an adverse determination, as well as any interim relief cost, plus interest, unless there is a final determination that the Contractor is not liable for any retaliatory or discriminatory acts. The allowance of such costs, notwithstanding any other provision of the contract, will be determined in accordance with this clause.
- C. Litigation costs and settlement costs incurred in connection with the defense of, or a settlement of, an employee action are allowable if incurred by the Contractor before any adverse determination of the employee's claim, if approved as just and reasonable by the Contracting Officer and otherwise allowable under the contract. Costs incurred in pursuit of mediation or other forms of alternative dispute resolution are allowable, if approved as just and reasonable by the Contracting Officer, and no adverse determination of the employee's claim has occurred. Additionally, the Contracting Officer may, in appropriate circumstances, reimburse the Contractor for litigation costs and costs of judgements and settlements which, in aggregate, do not exceed any prior settlement offer approved by the Contracting Officer and rejected by the employee.
- D. Except as provided in paragraphs C, E, and F of this clause, any other cost associated with an employee action (including litigation costs connected with, a judgement resulting from, or settlement subsequent to the employee action) are not allowable unless the Contractor receives a judgement or final determination favorable to the Contractor. In such event, reasonable litigation costs incurred by the Contractor are allowable, and the Contractor may submit a request for reimbursement for all such costs incurred subsequent to the adverse determination.
- E. Costs incurred by the Contractor as a result of an employee action for retaliatory or discriminatory acts that resulted from compliance with either (1) specific terms and conditions of the contract or (2) written instructions from the Contracting Officer shall be allowable.

Reasonable litigation costs and settlement costs incurred by, and judgements entered by the Office of Hearings and Appeals against, the Contractor as a result of an employee action for discrimination under 10 CFR 708 are allowable where the Office of Contractor Employee Protection has issued a proposed disposition denying the relief being sought by

the employee and the employee requests a hearing by the Office of Hearings and Appeals.

- F. The provisions of this clause shall not apply to the defense of suits by employees or ex-employees of the Contractor under FAR 31.205-47.
- G. The Contractor shall insert or have inserted the substance of this clause in all cost reimbursement subcontracts, with respect to work performed at a DOE-owned or -leased facility where 10 CFR 708 is also applicable under provisions of the contract clause entitled "Whistleblower Protection for Contractor Employees."

H.41 PERFORMANCE OBJECTIVES, MEASURES, EXPECTATIONS, AND FEE DISTRIBUTION

A. Establishment of Baseline Performance Incentives

The Government will develop performance objectives, measures, and expectations along with related fee distribution for the coming fiscal year which, after discussion with the Contractor, will be unilaterally added to the contract. The performance incentives and fee distribution will reflect the priority and importance that DOE places on accomplishment of key results. The Contractor may propose additional performance objectives, measures, and expectations which may be negotiated prior to placement in the contract. The final determination of incentives and related fee distribution will be made solely by DOE and DOE may unilaterally add any and all of them in a modification to this contract. However, if the Contractor disagrees with the established objectives, measures, expectations, and related fee distribution, the Contractor may appeal the determination to the RL Manager. However, the final decision by the RL Manager shall not be subject to the contract clause entitled "Disputes - Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). The objectives, measures, expectations, and related fee distribution will be set forth in Section J, Appendix D, of this contract.

B. Performance Incentive

After determination of objectives, measures, expectations, and related fee distribution for a fiscal year, the Contractor and DOE shall execute Performance Incentives in the format included in Section J, Appendix D, for each incentive. The Performance Incentives set forth the agreed upon criteria/specifications for acceptable performance of such objectives, measures, and expectations. The criteria/specifications set forth in the Performance Incentives shall be mutually agreed to by both DOE and the Contractor. In the event the parties cannot mutually agree, the final decision shall be made solely by the

RL Manager, and shall not be subject to the contract clause entitled "Disputes - Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

C. Interference

In the event the Contractor believes the DOE has interfered with its ability to meet specific performance incentives, it may present evidence to support this position along with a proposed adjustment to the RL Manager. The RL Manager will make a determination and provide a copy of that determination to the Contractor. The RL Manager's determination will be final and not subject to the contract clause entitled, "Disputes-Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

D. Positive and Negative Incentives

A critical few of the performance objectives, measures, and/or expectations have fee directly assigned to their accomplishment, or have a negative deduction from earned fee for failure to accomplish. A lesser number of the expectations may be incentivized positively and/or negatively over and above the other fee assigned. If fee is assigned to an objective or measure, then in order to receive the fee amount set out for a single objective or measure, all performance expectations supporting that objective or measure must be met. If one or more of the expectations is not met, none of the fee associated with the objective or measure will be paid. If a performance expectation has an incentive level which is met, an incentive fee would be paid in addition to any fee earned for accomplishment of the objective, measure, and/or expectation. In addition, if the incentivized expectation is accomplished, its incentive fee portion would be paid regardless of whether or not the fee was earned on the overall objective or measure. Certain of the objectives, measures, and/or expectations may have a negative deduction set out. If the negative level of performance is not surpassed, no fee will be paid for these objectives, measures and/or expectations and further the negative deduction will be made from other fees earned. In no event, however, would the aggregate of all negative deductions exceed the amount of fee earned for the given Fiscal Year. Furthermore, for FY 1999, and 2000, the aggregate of all negative deductions actually invoked shall not exceed 20% of the total available fee for all Performance Incentives, excluding the FY 1999 fee for the Performance Expectation Plan.

E. Accomplishment of Incentives

In order for any expectation to be considered performed, not only must it meet the criteria of the Performance Incentive, but the work must be accomplished within the approved

cost and schedule thresholds specified in the PI, as modified through the Change Control process.

F. Fee Re-Allocation due to Cancellation or Changes

If, for any reason, DOE cancels an objective, measure, and/or expectation, the fee attached to that objective, measure, and/or expectation shall be reallocated to a new objective, measure, and/or expectation or to existing other objectives, measures, and/or expectations or to both new and existing objectives, measures, and/or expectations. The decision as to the new objective, measure and/or expectation and/or the decision as to which existing objectives, measures, and/or expectations fee may be reallocated, is at DOE's unilateral discretion.

G. Fee Determination at End of Period

At the conclusion of the annual performance period the government shall evaluate the Contractor's performance to determine the performance based fee earned during the year. The evaluation of performance against objectives, measures, and expectations will be a consideration in (1) incentive fee determinations by the RL Manager, (2) in the DOE decision whether or not to exercise the option to extend the contract, and (3) in the DOE decision whether to terminate the contract for default. The final determination on the acceptability of the work performed by the Contractor under this provision and incentive fee determination shall be made solely by the RL Manager.

H. Superstretch Incentives

To challenge the Contractor to accomplish significant, mission critical, superstretch goals that are in the best interest of the Government, significantly accelerates outyear workscope identified in the DOE-approved baseline, and motivate the Contractor to extraordinary performance, the following incentive provision is established:

Performance incentives addressing superstretch goals should be developed prior to the beginning of the fiscal year, but may be developed and implemented during the fiscal year on a limited basis. The Contractor shall coordinate with the RL Manager or designee to identify superstretch goals. The fee for accomplishment of superstretch goals will be paid from a share of the cost of the accelerated work and will be outside the fee pool identified in the clause entitled "Estimated Cost and Fee." The accelerated workscope must be identified and authorized by a duly approved Advanced Work Authorization (AWA) that must be approved by the RL Manager prior to the Contractor beginning work. Once approved, the Contractor shall prepare and submit a Baseline Change Request (BCR) to RL within 15 days. The BCR shall document the scope, cost,

and schedule changes necessary to incorporate the accelerated workscope into the baseline. The superstretch costs will be identified in the BCR and will include fee at the rate up to 20% of the revised BCWS of the accelerated workscope. A copy of the performance incentive shall be attached to the BCR.

The BCR will be processed through the FDH and RL Change Control Boards. When the work is complete, a package documenting completion of the work will be prepared and submitted to DOE for approval. Approval of the completion package by DOE will authorize payment to the Contractor of the fee earned. To earn fee associated with a superstretch incentive, the workscope associated with the superstretch incentive must be completed in the fiscal year that the savings were realized.

The superstretch performance incentives must be performed in accordance with the cost and schedule criteria identified in the performance incentive. The cost savings must be realized through efficiencies and/or workscope deletions and not deferrals.

Fee payments from accomplishment of superstretch goals will be separate from and not subject to or impact the provisional payment of fee limitations described in the clause entitled, "Provisional Payment of Fee."

H.42 SEGREGATION OF COSTS

- A. Whenever the contract contains both fixed-price and cost-type efforts, the Contractor shall maintain separate accounts for each unique contract type by Contract Line Item Number (CLIN), by task order, or other suitable accounting procedure of all incurred segregable costs of work allocable to the work effort directly related to each contract.
- B. Whenever the contract contains a provision for an incentive for a portion of the work effort under the contract, the Contractor shall maintain separate accounts, by CLIN, task order, or other suitable accounting procedure of all incurred segregable costs of work allocable to the work effort directly related to the incentive.
- C. If the Contractor has initiated work pursuant to the contract clause entitled "Cost Savings Program," if included in this contract, regardless of whether or not a proposal has been accepted, the Contractor, for each cost savings incentive effort/proposal, shall maintain separate accounts, by CLIN, task order or other suitable accounting procedure, of all incurred segregable costs, both changed and not changed, allocable to the changed work effort set forth in the applicable Cost Savings Proposal.

- D. The Contractor shall maintain all such accounts, required pursuant to the paragraphs above, in accordance with this contract, but, in no case, for a period of less than 3 years following the Government's determination of the applicable incentive fee.

H.43 AVAILABLE FEE POOL

A. Fee Pool Allocation

It is DOE's intention that the Government will pay no more in the total available fee pool across the Hanford Site for the Contractor and its Major Subcontractors (including LMH as a separate prime Contractor to DOE starting in FY 2000) than if a single management and operating Contractor were operating the whole site. The total available fee pool under this contract will be no more than the maximum fee permitted under DEAR 970.1509 and 915.971-5 for a Defense Facility - A (See DEAR 970.1509-8(b)(6)). The Government may also create "superstretch" incentives that would allow the Contractor to earn additional fee outside the fee pool. The fee structure for the period October 1, 1996, through September 30, 1997 is allocated 100% Performance Fee. For each fiscal year thereafter, the Contracting Officer shall allocate the total available fee pool, set forth in Section B, for that fiscal year across the fee structure in accordance with the following:

<u>Fee/Incentive</u>	<u>Percentage</u>
Base Fee	0%
Award Fee	0%
Performance Fee	<u>100%</u>
Total Available Fee Pool	100%

The allocation shall be documented in the annual update to the Fee Plan contained in Section J, Appendix H.

B. Fee Pool Adjustment

However, if the estimated cost for that fiscal year, set forth in Section B, differs significantly from the estimated cost being set for that fiscal year following passage of the budget, the corresponding total available fee pool for that fiscal year may be increased or decreased unilaterally by the Contracting Officer. The aforementioned unilateral increase or decrease will be determined as follows:

The fiscal year total available fee pool of Section B will be multiplied by the following:

Estimated Cost Determined from Budget
Estimated Cost for Fiscal Year in Section B

The estimated cost, total available fee pool and the contract fee structure, as it may be determined from the formulas above, for the new fiscal year shall be set forth in a modification unilaterally executed by the Contracting Officer. The amount of the total available fee pool or fiscal year allocation of the available fee across the fee structure hereunder shall not be subject to the contract clause entitled "Disputes - Alternate I."

If, at any time, the Contracting Officer determines that the amount of fee or fee structure is not commensurate with the scope of work or risk under the contract, the Contracting Officer may unilaterally decide, not subject to the contract clause entitled "Disputes - Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613), to enter into negotiations with the Contractor to determine a revision to the total available fee pool or fee structure.

H.44 BASE FEE AND AWARD FEE (JUL 1991)

NOTE: This clause will not be applicable for FY 1997. In future years, the use of this clause will be subject to approval of the DOE Contracting Officer.

A. Base Fee and Award Fee

It is herewith agreed that a base fee and an award fee, to be determined in accordance with the provisions of this clause, are available for payment in accordance with the contract clause entitled "Payments and Advances (Modified)."

B. Fiscal Year Fee Amounts

Prior to the beginning of each fiscal year under this contract, the Contracting Officer shall determine the amount of the base and award fee in accordance with the clause entitled "Available Fee Pool." This contract shall be unilaterally modified by the Contracting Officer to reflect fiscal year amounts for base and award fees. It is herein agreed the award fee amount shall be assigned to evaluation periods 6 months in duration. The fiscal year award and base fee amounts shall not be subject to the contract clause entitled "Disputes - Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

C. Determination of Award Fee Earned

- (1) The Government shall, at the conclusion of each specified evaluation period, evaluate the Contractor's performance for a determination of award fee earned.
- (2) For this contract, the Government Fee Determination Official (FDO) will be the RL Manager. The Contractor agrees that the determination as to the amount of award fee earned will be made by the Government FDO and such determination is binding on both parties and shall not be subject to appeal under the contract clause entitled "Disputes - Alternate I," or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613), or any other appeal clause.
- (3) The evaluation of Contractor performance shall be in accordance with the Performance Evaluation Plan described in subparagraph D below. The Contractor shall be promptly advised in writing of the determination and the reasons why the award fee was or was not earned. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government in accordance with the Performance Evaluation Plan (PEP), the FDO may also consider any information available to him or her which relates to the Contractor's performance of contract requirements identified in the Statement of Work as amended to include annual work authorization plans (or similar documents specifying work scope) regardless of whether or not those requirements are specifically identified in the PEP. To the extent the Contractor does not perform those requirements in accordance with the Statement of Work as amended to include annual work authorization plans (or similar documents specifying work scope), the FDO may reduce the fee determination. In the event that the Contractor's performance is considered unacceptable in any area of contract performance which is specified in the Performance Evaluation Plan, even if no weight or fee is specifically assigned to the particular performance area, the FDO may at his/her discretion determine the Contractor's overall performance to be unacceptable, and accordingly may withhold the entire award fee for the evaluation period.

D. Performance Evaluation Plan

- (1) The Government shall establish unilaterally a Performance Evaluation Plan upon which the determination of award fee shall be based. Such Plan shall include the criteria to be considered under each area evaluated and the percentage of award fee available for each area. A copy of the Plan shall be provided to the Contractor 30 calendar days prior to the start of an evaluation period.

- (2) The Performance Evaluation Plan will set forth the criteria upon which the Contractor will be evaluated for performance relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria may be objective or subjective. The Plan shall also set forth a performance grading and fee conversion table establishing performance points and the percentage of available award fee earned for each performance point for outstanding, good, satisfactory, marginal, and unsatisfactory performance levels.
- (3) The Performance Evaluation Plan may, consistent with the contract statement of work, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor at least 90 calendar days prior to the end of the evaluation period in which the change will apply and at least thirty (30) calendar days prior to the change becoming effective.

E. Contractor Self-Assessment

Following each evaluation period, the Contractor shall submit a self-assessment within 7 calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period, including the areas within the Business Management Oversight Process. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The FDO will review the Contractor's self-assessment, if submitted, as part of their evaluation of the Contractor's management during the period. An unrealistic self-assessment will result in lower award fee determinations. The Contractor will not be penalized for a realistic self-assessment, although deficiencies noted by the Contractor may be reflected in the Government's evaluation. The self-assessment itself will not be the basis for the award fee determination.

F. Schedule for Award Determinations

The FDO shall issue the final award fee determination in accordance with the schedule set forth in the Performance Evaluation Plan. However, a determination must be made within 60 calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment discussed in paragraph E above, if required, or 75 calendar days after the end of the evaluation period. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined award fee amount at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the "Renegotiation Board Interest Rate," and is published in the Federal Register

semiannually on or about January 1 and July 1. The interest on any late award fee determination amount will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of award fee and be subject to interest if not paid in the succeeding 30-day period.

H.45 COST SAVINGS PROGRAM

Note: This clause will not be applicable for FY 1997. In future years, the use of this clause will be subject to approval of the DOE Contracting Officer.

A. General

It is DOE's intent to have its facilities and laboratories operated in the most efficient and effective manner possible. To this end, the Contractor shall, in the performance of this contract, assess its operations and identify areas where efficiencies would bring cost reductions and savings to operations without adversely affecting the level of performance required by the contract.

The Contractor, to the maximum extent possible, will identify areas where efficiencies/streamlined work processes may result in cost reductions/savings. The Contractor will develop and submit Cost Savings Proposals (CSP) addressing such to the Contracting Officer for review. If accepted, the Contractor shall share in any net (Measurable, Near-Term) savings realized from accepted CSPs in accordance with the incentive sharing arrangement in paragraph G. below. Any CSP submitted pursuant to this clause shall be subject to cost and pricing data (reference contract clauses, "Price Reduction for Defective Cost or Pricing Data;" and "Subcontractor Cost or Pricing Data" of this contract.)

B. Definitions

"Measurable, Near-Term Savings" as used in this clause, mean cost savings that revert to DOE control and may be available for deobligation in the immediate fiscal year or that will become available for deobligation in the following fiscal year. Such savings may result from a specific cost reduction/savings effort which is broken out from other efforts and negotiated on a Cost Plus Incentive Fee (CPIF)/Fixed Price Incentive (FPI)/Firm Fixed Price (FFP) basis or may result directly from innovative new or changed designs, processes and/or methods initiated by the Contractor and applied to a specific project or program. Such new or changed designs, processes, and/or methods must demonstrate achievement of cost effectiveness in excess of that anticipated by the "expected

performance” level set forth in the Statement of Work (Work Authorization Directive, Multi-Year Program Plan, or similar document). Measurable, Near-Term Savings are the net savings that result from the difference in the estimated cost of performing an effort/project as originally planned and the actual cost of performing that same effort/project using a revised plan intended to reduce costs, along with any Contractor’s Development, Contractor’s Implementation and administrative costs (Optional) + DOE costs (Optional) associated with the revised plan. Such savings must result in funding being returned to the direct control of DOE in a separate management reserve account. Savings resulting from formal or informal direction given by DOE will not be considered as Measurable, Near-Term savings for purposes of this clause and will not qualify for incentive sharing. Savings resulting from changes in the mission or routine reorganization of the Contractor due to changes in the budget will not be considered as Measurable, Near-Term Savings for the purposes of this clause and will not qualify for incentive sharing. Measurable, Near-Term Savings shall be limited, for purposes of the sharing rate(s) set forth in paragraph G. below, to a period not to exceed the current fiscal year in which they were initiated and the next fiscal year. In order to qualify for sharing, the savings must be susceptible to deobligation from the instant contract, whether or not such deobligation takes place.

“Contractor’s Development Cost,” as used here, includes, but is not necessarily limited to, the cost of up front planning, engineering, prototyping, and testing of a design, process or method.

“Contractor’s Implementation Cost,” as used here, includes, but is not necessarily limited to, the cost of tooling, facilities, documentation, etc. required to effect a design, process or method change once it has been tested and approved.

“DOE costs,” as used in this clause, refer to those DOE costs that result directly from implementing the CSP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the CSP.

“Administrative Cost,” as used here, includes, but is not necessarily limited to, the cost of developing the CSP (or similar cost reductions/savings proposal) and administering cost savings programs.

“Cost reduction” means the amount of the decrease in cost of performance, without deducting any Contractor’s development or implementation costs, resulting from using the CRP on this contract.

C. Procedure for Submission of CSPs

- (1) CSPs for Value Engineering (design/process/methods) type changes submitted by the Contractor should contain, at a minimum, the following:
 - (a) Current Method (Baseline). A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative and supporting documentation.
 - (b) New Method (Baseline). A verifiable description of the new cost, work scope, and schedule; how the initiative will be accomplished and supporting documentation.
 - (c) Feasibility Assessment. A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation should include an assessment of the difference between the current baseline and proposed new method less implementation costs.
- (2) CSPs for the establishment of stand alone CPIF/FPI/FFP programs not specifically related to Value Engineering (design/process/methods) type changes should contain, at a minimum, the following:
 - (a) Baseline Description. A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative (must be discretely identifiable in the MYPPs).
 - (b) Proposed Contractual Arrangement. A proposed contractual arrangement and the justification therefor.
 - (c) Estimated Cost and Supporting data. A detailed cost estimate and supporting rationale. If the effort is proposed on an incentive basis, then minimum and maximum cost estimates must be included for any proposed sharing arrangements.

D. Evaluation and Decision

The Contractor shall perform a preliminary evaluation of each proposed cost reduction initiative and submit it for DOE approval. The Contractor may share in savings realized as a result of cost reduction initiatives implemented without prior DOE approval; however, any such sharing of savings shall be a unilateral decision by DOE and not subject to the contract clause of this contract entitled "Disputes - Alternate I" or

otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

E. Calculation of Cost Savings

Estimated net savings shall be calculated by subtracting the total costs of the proposed CSP (New Method Costs + Contractor's Development Cost + Contractor's Implementation Costs + Administrative Costs [Optional] + DOE Costs [Optional]) from the total costs of the existing requirements.

F. Acceptance or Rejection of CSPs

The DOE Contracting Officer will notify the Contractor that a CSP will be accepted or rejected (or deferred) within 60 days of receipt.

The only CSPs that will be considered for acceptance are those that the Contractor can demonstrate will (1) result in a reduction in the total agreed upon estimated cost for authorized work in the sharing period, (2) not reappear as costs in subsequent periods, and (3) not result in any impairment of essential functions. Acceptance or rejection of the CSP is at the discretion of the Contracting Officer. The Contracting Officer's decision is not subject to the contract clause entitled "Disputes - Alternate I" or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

G. Sharing Rate

In general, if a CSP is accepted, the Contractor's share in net Measurable, Near-Term Savings shall not exceed 15% of the Measurable, Near-Term Savings realized by DOE during the defined sharing period. The Contractor agrees that not less than 15% of the Contractor's share of Measurable, Near Term savings shall be retained at the site to be distributed to those employees involved in identifying and/or achieving the cost reduction/savings. The specific share arrangement (targets, share lines, ceilings, etc.) for effort negotiated on an incentive basis will be set forth in the contractual document authorizing the effort.

H. Validation of Actual Savings

The DOE shall have the right to validate the actual costs of an accepted CSP, to determine the extent of actual Measurable, Near-Term Savings. If, in the opinion of the Contracting Officer, the actual Measurable, Near-Term Savings are significantly more or less than the estimated savings of the CSP or in the reduction of the estimated cost for the sharing period, the amount awarded under the CSP shall be adjusted. The Contracting

Officer's decision on the significance of the actual savings and the adjusted fee amount are not subject to the contract clause entitled "Disputes - Alternate I" or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

I. Relationship to Other Incentives

Only those benefits of an accepted CSP not rewardable under other clauses of this contract shall be rewarded under this clause.

J. Subcontracts

The Contractor may include an appropriate clause similar to this clause in any subcontract. In calculating any estimated net Measurable, Near-Term savings in a CSP under this contract, the Contractor's preparation, submission, testing, development, and implementation costs shall include any subcontractor's allowable costs, and any CSP incentive payments to a subcontractor clearly resulting from the acceptance of such CSP. The Contractor may choose any arrangement for subcontractor CSP incentive payments, provided that the payments shall not reduce the DOE's share of contract net Measurable, Near-Term Savings.

K. Termination

In the event of contract termination, this clause shall not apply. Termination settlements shall be in accordance with the contract clause entitled "Termination (Cost-Reimbursement)."

H.46 DETERMINATION OF INCENTIVE FEES

The parties to this contract agree that the incentive fee arrangements under this contract which include incentive types (both cost and performance), number of expectations incentivized, amount available under the various incentives as well as the method for determining fees earned and method of payment are applicable to the existing work scope for the current fiscal year only (unless otherwise specifically stated). At a reasonable time prior to the Contracting Officer's unilateral establishment of the annual fee structure, the Government will examine the benefits received, if any, from the existing incentive fee arrangements and the mechanisms for implementation for effectiveness and ease of administration. The Government shall unilaterally determine if any or all of the incentive fees should continue at all, in part, or in their present form. At that time the Contracting Officer may enter into discussions with the Contractor to determine new or changed fee arrangements.

**H.47 CONDITIONAL PAYMENT OF FEE OR INCENTIVES
(EXCLUSIVE OF BASE FEE)**

A. Conditional Payment of Fee or Incentives

In order for the Contractor to receive a fee or profit payment or share of cost savings, in whole or in part, the following minimum requirements must be met and must have been performed at a satisfactory level. If the following conditions are not met and performed at a satisfactory level, the RL Manager may reduce the fee or profit payment or share of cost savings, in whole or in part, which has otherwise been determined to have been earned under the terms and conditions of this contract. Any determination under this clause is not subject to the contract clause entitled "Disputes - Alternate I" or otherwise subject to litigation under the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). This clause does not apply to any Base Fee included in the contract.

B. Minimum Requirements

- (1) ES&H Program. The Contractor shall develop, obtain DOE approval of, and implement a comprehensive ES&H Program across the appropriate ES&H functional areas. Such Program will be consistent with the Integrated Environment, Safety and Health Management System Plan (ISMS Plan). The minimal performance requirements of the Program will be set forth in the DOE approved ISMS Plan. The Contractor must achieve the minimum performance requirements of the program in order to receive any otherwise earned fee, profit, or share of cost savings.
- (2) Catastrophic Event. If, in the performance of this contract, the Contractor should cause, through negligence or misconduct, a fatality or an event to occur that results in significant damage to the environment, and/or endangers the safety and health of workers and/or the public in excess of government (Federal, State and/or Local) regulated limits (if any), the Manager, Richland Operations Office, may reduce any otherwise earned fees (other than Base Fee,) in whole or in part.
- (3) Specified Level of Performance. The level of satisfactory performance associated with this contract is the completion of 76% or more of all individual performance expectations as set forth in Section J, Appendix D, or as modified during contract performance.

The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Manager, RL. To the extent that the Contractor

fails to achieve the above stipulated performance levels, the specific fee/incentive determination, may be reduced in whole or in part.

(4) Safeguards and Security

If, in the performance of this contract, there is a significant breach of nuclear safeguards or security, the RL Manager may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. The minimum performance requirements of the Safeguards and Security program include: (1) No verifiable diversion loss of Category I, II, III, or IV quantities of Special Nuclear Material; (2) No intentional release of classified matter to an unauthorized individual; (3) No verifiable compromise of classified matter that can cause exceptionally grave damage, serious damage, or damage; and (4) No overall unsatisfactory rating on the Annual Safeguards and Security Survey and/or inspection report by the HQ Office of Independent Oversight and Performance Assurance. A graded approach based upon the severity of the incident will be used in determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from an identified significant breach of nuclear safeguards or security. The RL Manager shall consider whether willful misconduct or negligence contributed to the occurrence and any mitigating circumstances presented by the Contractor or other sources.

C. Cost Performance

1. In the case of a performance type fee/award fee/incentive fee, the specific work effort incentivized must be performed within the cost specified for it in the contract/modification which incorporates the incentivized effort. Further, the performance of such work shall not result in an adverse impact to the cost for all other unrelated work effort.
2. In the case of a specific cost savings type fee/award fee/incentive fee on a portion of the contract, the Contractor's performance of such work shall not result in an adverse impact to the cost for all other unrelated work effort. Such cost will be specific in the contract which incorporates the incentivized effort.
3. The Contractor's performance within the stipulated cost performance levels shall be determined by the RL Manager. To the extent that the Contractor fails to achieve the above stipulated cost performance levels, the associated fee/award fee/incentive fee determination may be reduced in whole, in part, or a negative fee may result.

H.48 PROVISIONAL PAYMENT OF FEE

A. Definition

For purposes of this clause, the word “fee” shall mean performance fee, award fee, base fee, or cost savings share.

- B. If interim payments of fee are paid before the final determination of fee, those payments shall be provisional pending that final determination. Such provisional payments may be made at the discretion of the Contracting Officer on a monthly basis up to a maximum amount for the fiscal year not-to-exceed 70 percent of the performance fee pool.
- C. DOE agrees to pay to the Contractor, at the discretion of the Contracting Officer, on a provisional basis an amount up to 10% of the annual performance fee pool in each of the first two calendar months of each Fiscal Year and 5 % in each calendar month thereafter.
- D. The final fee determination will be made by the Contracting Officer or RL Manager, as appropriate, in accordance with the fee clauses of this contract. In the event that overpayment results from the payment of fee on a provisional basis, the Contractor shall reimburse such overpayment to the Government upon demand, payable with interest in accordance with the contract clause entitled “Interest”.

H.49 CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY

In accordance with the clause entitled, “Contractor Use of Mandatory Sources of Supply,” the following are to be purchased from the Committee for Purchase from People Who are Blind or Severely Disabled or from the Defense Logistics Agency, General Services Administration, or the Department of Veterans Affairs:

(The Government will identify these items following contract award.)

H.50 COST SAVINGS PROGRAM EXCLUSION FROM OTHER FEES

NOTE: Not applicable for FY 1997. In future years, the use of this clause will be subject to approval of the DOE Contracting Officer.

Fluor Daniel Hanford and its Major Subcontractors will be rewarded for net cost savings benefits under the Cost Savings Program only if it is not rewardable under other clauses of this contract.

H.51 SHARING EARNED FEES WITH EMPLOYEES

Fluor Daniel Hanford will establish a merit based employee fee sharing program for the prime contract and its Major Subcontractors. The fee sharing process will be described in a sitewide procedure. Fluor Daniel Hanford and its Major Subcontractors will set aside five percent of their earned fee to be provided to their employees as stipulated in the sitewide procedure.

H.52 CONTRACTOR CONTROLLED INSURANCE PROGRAM

- A. The Contractor shall procure, at no cost to the DOE, a Contractor Controlled Insurance program (CCIP), as set forth in the Contractor's proposal dated March 25, 1996, to the extent available on a commercially reasonable basis.

The Contractor support the DOE's efforts to improve their insurance program by the collection of insurance claim statistics and information. They will assist the DOE by complying with the insurance reporting requirements as defined by DOE Order 350.1 change 1.

(No changes to the unredacted text)

This clause does not apply to liabilities covered by the Nuclear Hazards Indemnity Agreement.

H.53 FRINGE BENEFIT CEILING

For employees of the Contractor and its Major Subcontractors who receive corporate fringe benefits, the allowable costs of employee burdens and benefits will not exceed (no change) % as adjusted for changes in statutory payroll tax and insurance requirements.

H.54 INDIRECT COST ALLOCATIONS

For the base contract period and any extension thereof, allocations of home or corporate office general and administrative (G&A) expenses are unallowable for the Prime Contractor and Major Subcontractor. Such indirect costs may only be allowable when a directly benefiting relationship to the DOE program is demonstrated and approved by the Contracting Officer.

The following are ceiling indirect cost rates for (no change) during the transition period: home office fringe (no change) %, WTS fringe/overhead (no change) %, and SG&A (no change) %.

The following is a ceiling indirect cost rate for (no change) during the transition period: G&A (no change) %.

H.55 TRANSITIONS AND TRANSFERS - WORK SCOPES

A. Transition and Transfer: WHC, ICF KH, BCSR, and PHMC

- (1) Purpose. Effective as of 12:01 a.m. on October 1, 1996, Contractor will accept the assignment of certain obligations, rights, title and interest from WHC, ICF KH and BCSR, all as specifically set forth in the Transfer Agreement executed by the DOE, FDH, WHC and ICF KH on September 30, 1996. The purpose of this contract clause H.55A is to set forth certain understandings with respect to transfer and close-out activities.
- (2) Definitions. For purposes of this contract clause H.55A and contract clause H.56A, the following definitions shall apply:

WHC	Westinghouse Hanford Company
ICF KH	ICF Kaiser Hanford Company
M&O Contract	DE-AC06-87RL10930
PHMC Contract	DE-AC06-96RL13200
Transfer Date	October 1, 1996
Transfer Agreement	The Transfer Agreement executed by Westinghouse Hanford Company, Fluor Daniel Hanford, Inc., ICF Kaiser Hanford Company and the DOE, effective as of 12:01 a.m. on October 1, 1996.

Other terms used in this contract clause H.55A and in contract clause H.56A, which are initially capitalized, shall have the meanings defined in the Transfer Agreement.

- (3) Responsibilities. In a manner so as to not interfere with the performance of this PHMC contract, FDH shall provide the following assistance in closing out the M&O contract, the ICF KH subcontract and the BCSR subcontract:
- (i) FDH shall provide necessary indirect support including, but not limited to, emergency services, access and use of the Hanford Site integrated voice-data telecommunication system, access and use of the Hanford Local Area Network, and other Hanford Site resources
 - (ii) FDH shall provide necessary government-owned property including, but not limited to, computers, photocopiers, office furniture, fax machines, office supplies and equipment and similar items.
 - (iii) FDH shall make arrangements with other Hanford Site Contractors, including the Hanford Environmental Health Foundation, necessary for close-out activities.
 - (iv) FDH shall provide, with the DOE Contracting Officer's approval, necessary clerical and secretarial support to support close-out activities.
 - (v) Subject to any DOE restrictions, for purposes of all close-out activities, including litigation, claims, and administrative hearings arising under the M&O contract, the ICF KH subcontract and the BCSR subcontract, FDH shall provide WHC, ICF KH and BCSR on a non-interference basis:
 - (a) Reasonable access to all data, documents and records transferred to FDH that are necessary to the close-out activities including defense or prosecution of such litigation, claims or hearings. Access shall be reasonable considering the urgency of the matter, but whenever possible, FDH shall receive at least one (1) day's advance notice of the need to review records together with a description of the type, nature, and location (if known) of the records requested for review. In addition, FDH shall provide reasonable access, considering the urgency of the matter, to relevant employees including employees of subcontractors who possess, control, or have knowledge of where the records may be located or can provide background information on the records. FDH shall not be required to release documents generated by FDH or its subcontractors which are protected from release by the attorney-client, or work product privilege or without the consent of individuals who hold a legally recognized privacy interest in the record.

- (b) Reasonable access to FDH employees or employees of any of its subcontractors necessary for such close-out activities including the prosecution or defense of any litigation, claims, or hearing (including grievances and arbitrations) not assigned to FDH by the Transfer Agreement and retained by WHC or for legal administrative claims or actions which arise on or after the Transfer Date. FDH shall provide WHC reasonable access considering the urgency of the matter, but whenever possible, FDH shall receive at least one (1) working day's advance notice or as FDH and WHC may further agree. FDH shall receive reasonable access to WHC, ICF KH and BCSR employees to assist FDH in the prosecution or defense of any legal or administrative action, including grievances and arbitrations, transferred or assigned for management purposes to FDH by the Transfer Agreement or which arise on or after the Transfer Date.
- (c) Subject to all security and safety laws, rules, regulations, and internal DOE Orders or Directives, FDH shall provide reasonable access to the Hanford Site as necessary for such close-out activities including the prosecution or defense of any litigation, claims, or hearings.

In the event a requested access is denied, FDH shall immediately notify the DOE providing the reasons for such denial. Final decision on denied access will be made the Manager RL and is not subject to the disputes clause of this PHMC contract.

- (vi) FDH shall cooperate with WHC in the collection of any balance that may be due and owing on any corporate travel and telephone credit card held by a former WHC employee who becomes employed by FDH or its subcontractors.
- (vii) Consistent with the WHC College Educational Reimbursement Program, FDH shall assume and accept all of WHC's current liabilities and obligations for educational expenses for those WHC employees who become employees of FDH or its subcontractors as identified on Attachment 7.L. to the Transfer Agreement, provided however such program(s) may be modified in the future.

- (viii) With respect to certain WHC, ICF KH and BCSR employees who are on domestic assignment at midnight September 30, 1996, FDH agrees to continue the reimbursement of such assignments as set forth in the individual assignment agreement until such time as the employee is returned to the Hanford Site or the assignment is otherwise changed.
- (ix) FDH shall complete all reasonable administrative and other actions necessary to effect the transfers as set forth in the Transfer Agreement.

B. Transition and Transfer: FDH and LMHC

- (1) Purpose. Effective as of 12:01 a.m. on October 1, 1999, Contractor will transfer and assign certain obligations, rights, title and interest to Lockheed Martin Hanford Corporation (LMHC), all as specifically set forth in the Transfer Agreement executed by the DOE, FDH, and LMHC on September 30, 1999. The purpose of this contract clause H.55B is to set forth certain understandings with respect to transfer and continuing service activities.
- (2) Definitions. For purposes of this contract clause H.55B and contract clause H.56B, the following definitions shall apply:

FDH	Fluor Daniel Hanford, Inc.
LMHC	Lockheed Martin Hanford Corporation
PHMC Contract	DE-AC06-96RL13200
LMHC Subcontract	80232765-9-K001
LMHC Transfer Date	October 1, 1996
LMHC Transfer Agreement	The Transfer Agreement executed by Fluor Daniel Hanford, Inc., Lockheed Martin Hanford Corporation, and the DOE, effective as of 12:01 a.m. on October 1, 1999.

Other terms used in this contract clause H.55B and in contract clause H.56B, which are initially capitalized, shall have the meanings defined in the LMHC Transfer Agreement.

- (3) Responsibilities. In accordance with the LMHC Transfer Agreement, and in a manner so as to not interfere with the performance of both the PHMC and the LMHC subcontract, FDH shall provide the following assistance:
- (i) FDH shall provide necessary indirect support including, but not limited to, emergency services, access and use of the Hanford Site integrated voice-data telecommunication system, access and use of the Hanford Local Area Network, and other Hanford Site resources.
 - (ii) FDH shall transfer accountability for necessary government-owned property including, but not limited to, real property, waste sites, computers, photocopiers, office furniture, fax machines, office supplies and equipment and similar items.
 - (iii) FDH shall make arrangements with other Hanford Site Contractors and subcontractors, including the Hanford Environmental Health Foundation, necessary to facilitate transition, assignment, and transfer.
 - (iv) FDH shall transfer necessary bargaining unit and professional personnel and staff to support transferred activities.
 - (v) Subject to any DOE restrictions and for purposes of all transfer activities, FDH shall provide LMHC, on a not-to-interfere basis, reasonable access to all data, documents, and records that are necessary to assign activities, including defense or prosecution of litigation, claims or hearings. Access shall be reasonable considering the urgency of the matter, but whenever possible, FDH shall receive at least one (1) day's advance notice of the need to review records together with a description of the type, nature, and location (if known) of the records requested for review. In addition, FDH shall provide reasonable access to LMHC, considering the urgency of the matter, to relevant PHMC employees, including employees of FDH, who possess, control, or have knowledge of where the records may be located or can provide background information on the records. FDH shall not be required to release documents generated by FDH or its subcontractors that are protected from release by the attorney-client, or work product privilege or without the consent of individuals who hold a legally recognized privacy interest in the record. Should FDH require access to LMHC records or employees for any of the above stated matters, FDH shall provide LMHC with at least one (1) day's advance notice, subject to the urgency of the matter.

- (vi) FDH shall cooperate with LMHC in the collection of any balance that may be due and owing on any corporate travel and telephone credit card held by a former PHMC employees who become employed by LMHC.
- (vii) Consistent with the FDH College Educational Reimbursement Program, FDH shall transfer to LMHC all of FDH's current liabilities and obligations for educational expenses for those PHMC employees who become employees of LMHC.
- (viii) With respect to certain PHMC employees who are on domestic assignment at midnight September 30, 1999, FDH agrees to continue the reimbursement of such assignments as set forth in the individual assignment agreement until such time as the employee is returned to the Hanford Site or the assignment is otherwise changed.
- (ix) FDH shall complete all reasonable administrative and other actions necessary to effect the assignments and transfers as set forth in the LMHC Transfer Agreement.
- (x) FDH shall provide services to LMHC as defined in Attachment G to the LMHC Transfer Agreement.

H.56 TRANSITIONS AND TRANSFERS - COSTS AND FUNDING

A. Transition and Transfer: WHC, ICF KH, BCSR, and PHMC

- (1) Purpose. The purpose of this contract clause H.56A is to set forth certain terms and conditions that apply to the transition and transfer activities as set forth in the Transfer Agreement executed by the DOE, Contractor, WHC and ICF KH effective as of 12:01 a.m. on October 1, 1996.
- (2) Assignment of Agreements, Obligations, Rights, Title and Interest. WHC, ICF KH, and BCSR had certain obligations, rights, title and interest prior to the Transfer Date which were assigned to FDH and its subcontractors pursuant to the provisions of the Transfer Agreement. The DOE and Contractor recognize that the terms, circumstances, regimes, requirements, conditions, and commitments contained in or relating to:
 - (i) Purchase orders, subcontracts, agreements and leases for real property, the Cooperative Research and Development Agreements, the Uranium Sales Request Proposal and the other agreements referred to in Sections 2.A,

2.B, 2.C, 2.D and 2.E of the Transfer Agreement (hereinafter collectively referred to as the “Assigned Agreements”); and

- (ii) Intellectual property, software licenses and confidentiality or non-disclosure agreements referred to in Sections 3.A, 3.B and 3.C of the Transfer Agreement (hereinafter collectively referred to as the “Assigned Intellectual Property Agreements”); and
- (iii) Financial and administrative commitments referred to in Section 7 of the Transfer Agreement (hereinafter collectively referred to as the “Financial Commitments”); and
- (iv) Labor grievances, arbitrations and litigation, and other matters referred to in Sections 8.B., 8.C., 8.D., 8.E., 8.F., and 8.G. of the Transfer Agreement (hereinafter referred to as “Matters”); and
- (v) Environmental or other permits referred to in Section 9 of the Transfer Agreement (hereinafter referred to as the “Environmental Permits”); and
- (vi) Hanford Site Workforce Restructuring Plan referred to in Section 10.A. and 10.B. of the Transfer Agreement (hereinafter referred to as the “Restructuring Plan”); and
- (vii) Enhanced Retirement and Special Voluntary Reduction of Force Programs referred to in Section 10.C. of the Transfer Agreement (hereinafter collectively referred to as the “VRF Programs”); and
- (viii) Pension, savings and benefits plans referred to in Section 11 of the Transfer Agreement (hereinafter collectively referred to as the “Plans”); and
- (ix) The actions and activities referred to in paragraphs D, F and G of this contract clause H.56 (hereinafter collectively referred to as “paragraphs D, F and G”); were entered into in connection with, and/or resulted from the M&O contract, and may not be consistent with the terms and conditions of this PHMC contract. The DOE agrees that Contractor and its subcontractors can administer and act with respect to the above documents, agreements and activities under the terms of the assigned document or agreement and is not required to make modifications thereto in order to achieve conformance with the terms and conditions of this PHMC contract. Contractor and its subcontractors, however, may as they

deem appropriate make such conforming modifications to said documents and agreement without further approval from the DOE.

- (3) **Costs.** The DOE and Contractor agree that all costs of administering the items set forth in paragraph A.2 above and including those incurred by reason of any claim, cost (including attorney's fees, mediation, arbitration or resolution and defense costs), demand, charge, expense, fine, penalty, liability, settlement, damages, including, but not limited to, investigation and remediation of hazardous materials, bodily injury to or death of any person, or damage to or destruction of any real or personal property, benefit plan funding, consequential, incidental, special or indirect damages, including without limitation, loss of profits, interest, product or business interruption, increased costs of operations and maintenance or staffing needs, remedy of employment or reinstatement, costs associated with decisions regarding disputed interpretations, however the same may be caused, and whether discovered before or after the Transfer Date, or similar payment ("Payments") made or due in accordance or in connection with the terms and conditions of or arising out of circumstances relating to the Assigned Agreements, Assigned Intellectual Property Agreements, Financial Commitments, Matters, Environmental Permits, Restructuring Plan, VRF Programs, Plans, or paragraphs D, F, and G, shall be allowable and reimbursed by the DOE to Contractor notwithstanding the terms and conditions of this PHMC contract, and any restrictions or limitations herein, whether or not such Payments relate to events arising before or after the Transfer Date, and howsoever arising; provided, however, that Payments shall not be reimbursed, except as considered appropriate by the Contracting Officer, if they are caused solely as a result of the lack of good faith or the willful misconduct of Contractor's key managerial personnel or are unallowable by federal statute or regulation.
- (4) **Agreements and Leases for Certain Real Property.** The DOE has directed that Contractor or its subcontractor, DynCorp Tri-Cities Services, Inc., accept the assignment of the leases of the following three parcels of real property from WHC: (1) 712 Swift, Suite 4, Richland, Washington, (2) 3090 George Washington Way, Richland, Washington, and (3) 3070 George Washington Way, Richland, Washington, as set forth in Section 2.B. of the Transfer Agreement. As the third-party tenants of the three parcels referred to above, will not be under the control of, or in contractual privity with, Contractor or its subcontractor, DynCorp Tri-Cities Services, Inc., the DOE shall defend, indemnify and hold Contractor and its subcontractor, DynCorp Tri-Cities Services, Inc., harmless from and against any and all claims, costs, suits and damages, including attorney's fees, arising out of, or in connection with, said third-party tenants' occupancy of said parcels, and howsoever arising.

- (5) Transfer of Government-Owned Real and Personal Property. Notwithstanding the transfer of the care, custody and control of the government-owned real and personal property referred to in Sections 13.A. and 13.B. of the Transfer Agreement, for the one (1) year period following the Transfer Date, Contractor and its Major Subcontractors shall be entitled to conduct an inventory, survey and assessment of said government-owned real and personal property. Should Contractor or its Major Subcontractors discover any differences between WHC's representations and the actual circumstances with respect to said government-owned real and personal property, said differences shall be considered pre-existing conditions in accordance with the terms of this PHMC contract. Contractor shall not be liable under this PHMC contract for any government-owned real and personal property transferred to Contractor or its Major Subcontractors which is subsequently determined by reconciliations and condition surveys to have been lost, stolen, damaged or otherwise unaccounted for as of the Transfer Date.
- (6) Personnel. The DOE and Contractor agree that actions taken under this contract clause H.56 and the Transfer Agreement relating to the employment of personnel, the transfer of benefit plans and other employment related plans and obligations, and the displacement of employees are being accomplished at and in accordance with the directions of the DOE.
- (7) Mapping. During the period from August 6, 1996 to September 30, 1996, employees of WHC, ICF KH and BCSR were mapped to FDH and its Subcontractors. The DOE and Contractor agree that during the period from October 1, 1996 through December 31, 1996, some of the former employees of WHC, ICF KH and BCSR who were mapped by FDH or its subcontractors on October 1, 1996, may be remapped among FDH or its subcontractors. For purposes of compliance with contract clause H.2, employees who are remapped pursuant to this Clause H.56 will be treated, with respect to salary and other related provisions, as if such employees had been mapped directly from the incumbent to the final employing subcontractor.
- (8) Accuracy of Information. Contractor and its subcontractors will rely upon information supplied by WHC, ICF KH and BCSR or others in performing the work pursuant to the terms of this PHMC contract. The DOE and Contractor agree that the accuracy of such information is not within Contractor's and its subcontractors' control, and that Contractor and its subcontractors shall not be liable for its accuracy, nor for its verification.

- (9) Drug-Free Workplace. The DOE and Contractor agree that no drug testing will be required for the former employees of WHC, ICF KH or BCSR who become employed by Contractor or its subcontractors on October 1, 1996. At all other times, Contractor and its subcontractors will follow the drug testing requirements set forth in the program(s) in place pursuant to the provisions of clause I of this PHMC contract.

B. Transition and Transfer: FDH and LMHC

- (1) Purpose. The purpose of this contract clause H.56B is to set forth certain terms and conditions that apply to the transition and transfer activities as set forth in the LMHC Transfer Agreement executed by the DOE, Contractor, and LMHC effective as of 12:01 a.m. on October 1, 1996.
- (2) Assignment of Agreements, Obligations, Rights, Title and Interest. FDH had certain obligations, rights, title and interest prior to the LMHC Transfer Date that were assigned to LMHC pursuant to the provisions of the LMHC Transfer Agreement. The DOE and Contractor recognize that the terms, circumstances, regimes, requirements, conditions, and commitments contained in or relating to:
- (i) Financial and administrative commitments referred to in Section 4 of the LMHC Transfer Agreement (hereinafter collectively referred to as the “Financial Commitments”); and
 - (ii) Labor grievances, arbitrations and litigation, and other matters referred to in Sections 5.B of the LMHC Transfer Agreement (hereinafter referred to as “Matters”); and
 - (iii) Environmental or other permits referred to in Section 10.A, 10.B, and 10.C of the LMHC Transfer Agreement (hereinafter referred to as the “Environmental Permits”); and
 - (iv) The actions and activities referred to in Section 17 of the LMHC Transfer Agreement relating to the provision of services between Contractor and its subcontractors and LMHC (hereinafter referred to as the “Services”); and
 - (v) The actions and activities referred to in paragraphs B(4), B(5), and B(6) of this contract clause H.56 (hereinafter collectively referred to as “paragraphs B(4), B(5), and B(6)”; were entered into in connection with, and/or resulted from the LMHC subcontract being assigned to the DOE, and may not be consistent with the terms and conditions of the PHMC.

The DOE agrees that Contractor and its subcontractors can administer and act with respect to the above documents, agreements and activities under the terms of the assigned document or agreement and the Contractor is not required to make modifications thereto in order to achieve conformance with the terms and conditions of the PHMC. Contractor and its subcontractors, however, as they deem appropriate, may make such conforming modifications to said documents and agreement without further approval from the DOE.

- (3) **Costs.** The DOE and Contractor agree that all costs of administering the items set forth in this paragraph B are allowable in accordance with the clause in this contract entitled, "Payments and Advances," as well as federal statute and regulations, and that actions by third parties are allowable in accordance with the clause entitled, "Insurance – Litigation and Claims".
- (4) **Transfer of Accountability for Government-Owned Real and Personal Property.** Contractor and its Major Subcontractors shall not be liable under the PHMC for any government-owned real, waste, and personal property transferred for accountability purposes to LMHC that is subsequently determined by reconciliations and condition surveys to have been lost, stolen, damaged or otherwise unaccounted for as of or noticed as a pre-existing condition before the LMHC Transfer Date unless damage or loss was caused or exacerbated by Contractor or its subcontractors.
- (5) **Assignments.** During the period from September 17, 1999, to September 30, 1999, bargaining unit employees of Contractor were assigned to LMHC. The DOE and Contractor agree that during the period from October 1, 1999, through December 31, 1999, some of the former employees of the Contractor and its subcontractors may be reassigned. For purposes of compliance with contract clause H.2, employees who are reassigned pursuant to this Clause H.56B will be treated, with respect to salary and other related provisions, as if such employees had been reassigned directly from the incumbent to the final employing party.
- (6) **Drug-Free Workplace.** The DOE and Contractor agree that no drug testing will be required for the former PHMC employees who become employed by LMHC on October 1, 1999. At all other times, Contractor and its subcontractors will follow the drug testing requirements set forth in the program(s) in place pursuant to the provisions of the clause entitled "Workplace Substance Abuse Programs at DOE Sites" of this contract.

H.57 “324/327 FACILITY TRANSFER”

- A. Reasonable costs incurred by Contractor as a result of PNNL’s operations at the 324 Facility shall be allowable.
- B. Reasonable costs incurred to modify the standards for compliance with 10 CFR 835 and 10 CFR 830.120 from the PNNL Radiation Protection Plan and Quality Assurance Implementation Plan to the FDH compliance documents shall be allowable.
- C. Clauses, “Transition and Transfer - Workscope” and “Transitions and Transfers - Costs and Funding,” shall be applied to this transfer as appropriate.
- D. DOE’s reimbursement obligation contained in Subsection A. of the clause in this contract entitled “Pre Existing Conditions,” shall be extended as follows to the 324 and 327 Facilities:
 - (1) With regard to those portions of the 324 and 327 Facilities that Battelle Memorial Institute (Battelle) or any successor does not occupy as of November 1, 1996, the Pre Existing Clause (PEC) date (i.e., the date before which the Contractor is entitled to reimbursement as described in the Pre Existing Conditions clause of this contract shall be November 1, 1996, rather than October 1, 1996.
 - (2) With regard to those portions of the 324 Facility that PNNL occupies as of November 1, 1996 but later quits possession, the PEC date shall be the date on which Contractor assumes, pursuant to written documentation, exclusive possession of and full responsibility for such portions of the 324 Facility.
 - (3) Prior to February 1, 1997, Contractor shall prepare a compliance plan for DOE approval to bring Contractor’s operations at the 324 and 327 Facilities into compliance with all applicable and appropriate standards. Therefore, so long as Contractor complies with such compliance plan, the PEC date shall be the date scheduled for compliance or sooner if compliance is sooner achieved.
 - (4) With regard to the complete inventory of nuclear materials referred to in § 5 of the Transfer Agreement, the PEC date shall be the date on which such inventory is completed.

H.58 AUTHORIZATION AGREEMENTS

In accordance with the Integrated Environment, Safety and Health Management System Plan (ISMS), Authorization Agreements (AAs) will be developed, mutually agreed to and executed

between FDH and DOE-RL. The purpose of an AA is to serve as a mechanism whereby the U.S. Department of Energy, Richland Operations Office (RL) and Fluor Daniel Hanford, Inc., (FDH) jointly clarify and agree to the key conditions for conducting work safely and efficiently in a facility. The AAs will be maintained by FDH. The AAs will not alter any terms and conditions of the Project Hanford Management Contract (PHMC) and do not impose on FDH or its Major Subcontractors any liabilities, fines, or penalties not already imposed under the terms and conditions of the PHMC and current statutes, rules, regulations and ordinances.

H.59 LIFE CYCLE ASSET MANAGEMENT GRADED APPROACH

This contract clause is applicable to all PHMC Major Subcontractors and DynCorp.

- A. The Contractor shall plan, acquire and dispose of DOE assets in a cost-effective manner to meet the DOE mission. The Contractor shall use industry standards, and a graded approach, in applying these requirements. FDH major site projects may define policies and procedures for implementing this clause within their project or program area. Major site projects are defined as the River Protection Project (formerly the Tank Waste Remediation System), Facility Stabilization, Waste Management, Spent Nuclear Fuels, Infrastructure, HAMMER, and Advanced Reactor Transition. Future major projects may be subject to life cycle asset management, as directed by the RL Contracting Officer or RL Contracting Officer Representative.

- B. The Contractor shall use a process based on a graded approach for physical asset acquisition that is an integrated, systematic approach that shall ensure, but shall not be limited to, the following:
 - (1) Use of a process tool, such as value engineering, to improve efficiency and cost-effectiveness when analyzing physical asset acquisition.
 - (2) Specification of the appropriate state, regional, or national building codes to which physical assets shall be designed and constructed.
 - (3) Consideration of maintainability, operability, disposition, life-cycle costs, and configuration integrity in designs and acquisitions.
 - (4) A project management system based on effective management practices that is sufficiently flexible to allow for the size and complexity of the project. For line item projects, the following requirements are considered minimal:

- (a) Prior to receiving RL approval to commence conceptual design, include the following in project planning
 - (i) minimum technical functional requirements
 - (ii) proposed cost and schedule ranges,
 - (iii) preliminary environmental strategy
 - (iv) identification of project technical and organizational interfaces, and
 - (v) integration with other projects and activities

- (b) Prior to receiving RL approval to commence execution, include the following in project planning:
 - (i) project objectives
 - (ii) scope, schedule, and cost baselines, including contingencies,
 - (iii) life-cycle cost analysis
 - (iv) preliminary safety assessment,
 - (v) project controls, including baseline change control, change control thresholds, and statusing,
 - (vi) verification of performance criteria through test and evaluation, and
 - (vii) design alternatives

- (c) Prior to operation, a plan for turnover of a facility shall be prepared; verification of performance criteria through test and evaluation shall be accomplished; and operational readiness shall be verified.

C. The requirements in this paragraph C., in part, supplement the Contractor's obligations to manage maintenance programs in accordance with the applicable chapters of DOE Order 4330.4B. The Contractor shall use a process based on a graded approach for the operation and maintenance of physical assets that shall ensure, as a minimum, the following:

- (1) The identification, inventory, and periodic assessment such as Condition Assessment Surveys or an equivalent assessment program, of the condition of physical assets in the maintenance program.
- (2) The establishment of requirements, budgets, and a work management system to maintain physical assets in a condition suitable for their intended use.

- (3) The preventive, predictive, and corrective maintenance to ensure physical asset availability for planning use and/or proper disposition.
- (4) A configuration management process to ensure the integrity of physical assets and system.
- (5) The efficient and effective management and use of energy and utilities.
- (6) A method for the prioritization of infrastructure requirements.
- (7) The management of backlogs associated with maintenance, repair, and capital improvements.
- (8) A method to ensure that prior to the completion of mission activities (e.g., production, research, etc.) actions are implemented to place the facility, systems and materials in safe and stable conditions and to ensure hazards are identified and known pending transfer or disposition. For facilities that have already completed mission activities and are awaiting transfer or disposition, ensure that actions are taken to eliminate or mitigate hazards and provide adequate protection to workers, the public and the environment. In both cases, actions shall be based on an assessment of the remaining hazards at the time when mission activities are completed or prior to transfer or disposition for facilities that have already completed mission activities. The actions shall include but not be limited to:
 - (a) Identifying and characterizing all hazardous and radioactive material and wastes remaining in system/facilities and providing for their stabilization (if necessary), adequate storage until they are removed from the facility, and (unless otherwise agreed to prior to facility transfer) removal.
 - (b) Assessment and adjustment (if necessary) of the facility authorization basis to ensure it continues to reflect conditions in the facility pending disposition.
 - (c) Conducting surveillance and maintenance activities required to maintain the facility and remaining hazardous/radioactive materials and waste in a safe and stable condition pending facility disposition.
 - (d) Identifying and allocating resources needed to maintain safe and stable conditions pending disposition.

- D. The Contractor shall use a process based on a graded approach for the disposition of physical assets that shall ensure, as a minimum, the following:
- (1) Application, as appropriate, of guidelines contained or referenced in DOE-STD-1120-98, INTEGRATION OF ENVIRONMENT, SAFETY AND HEALTH INTO FACILITY DISPOSITION ACTIVITIES.
 - (2) For execution of contaminated facility disposition, as a minimum the following apply:
 - (a) A method to ensure that deactivation, surveillance and maintenance, and decommissioning activities are appropriately planned, conducted, and documented in a manner consistent with the guiding principles and core functions of the Department's integrated safety management and facility disposition policies. The disposition process shall provide for:
 - (i) The collection of baseline data to support a physical, chemical, and radiological characterization, updated as necessary to reflect changes in facility conditions during the disposition process.
 - (ii) Surveillance and maintenance activities that correspond with facility conditions, including changes resulting from disposition activities.
 - (iii) A method for identifying, assessing, and evaluating alternatives for deactivating and/or decommissioning and for selecting and documenting a preferred alternative.
 - (iv) An end-point process in deactivation and decommissioning planning that identifies specific facility end-points and activities needed to achieve those end-points.
 - (v) A method for detailed engineering planning and for plan documentation to execute the preferred deactivation and/or decommissioning alternative.
 - (b) The use of Non-Time-Critical Removal Action as the approach for decommissioning, by using the tailored process negotiated with the Environmental Protection Agency, with continued Defense Nuclear Facilities Safety Board oversight to the extent authorized by law. Non-Time-Critical Removal Action is a type of response action recognized by the Environmental

Protection Agency as appropriate for addressing hazardous substance threats where a planning horizon of six months or more is appropriate. Removal responses, including non-time-critical removals are the subject of 40 CFR 300.410 and 300.415. Under a signed agreement with EPA, the Department uses a non-time-critical removal approach tailored for DOE's decommissioning of contaminated facilities. That approach comprises threat assessment; identification, analysis, and documentation of decommissioning alternatives; opportunities for public participation in the decommissioning decision; and planning and performance of decommissioning activities. Under the DOE/EPA agreement, regulator involvement in decommissioning is determined locally.

- (c) The development of a final report, or equivalent document, for each deactivation and/or decommissioning project. Where deactivation and decommissions are conducted as a single, uninterrupted activity, only one final report, or equivalent, is required.
- E. In the acquisition, operation, maintenance, leasing and disposition of physical assets, the Contractor shall ensure that all applicable Federal, state, and local laws, regulations, and negotiated agreements are followed, and that applicable safeguards and security as well as integrated safety management requirements and policies are followed.

H.60 SPENT NUCLEAR FUELS CONTINGENT FEE

A. Start of Fuel Removal

FHI agrees that its retention of any fee paid in excess of \$1 million for fiscal year (FY) 1999 Spent Nuclear Fuel Performance Agreements and any fee paid in excess of \$1 million for FY 2000 Spent Nuclear Fuels Performance Agreements will be contingent upon the successful start of fuel removal from the K Basins by December 7, 2000. In addition, if fuel removal is not successfully started by December 7, 2000, then any fee allocated, in FY 2001, for the start of fuel removal cannot be earned.

As set forth in the Tri-Party Agreement (TPA) Milestone P-34-16 (as of December 2, 1998) and for purposes of this clause, the start of spent nuclear fuel removal is defined as "The Cold Vacuum Drying (CVD) Facility and Canister Storage Building (CSB) shall be ready to receive spent nuclear fuel. The spent nuclear fuel transport system shall be operable. The K West Basin spent nuclear fuel retrieval system shall begin retrieving, cleaning, and packaging spent nuclear fuel, and the First Multi-Canister Over Pack of

spent nuclear fuel will be loaded and transported to the Cold Vacuum Drying Facility for processing.”

If FHI fails to achieve a successful start of fuel removal from the K Basins by December 7, 2000, and therefore FHI fails the condition subsequent to retain the contingent portion of fee paid on Spent Nuclear Fuels Performance Agreements in FY 1999 and FY 2000, then the contingent fee paid will be offset against any FHI fee earned in FY 2001 in accordance with the Schedule below. Furthermore, notwithstanding any other provision in this Contract, including but not limited to, “Performance, Objectives, Measures, Expectations and Fee Distribution,” if FHI’s total earned fee in FY 2001 is insufficient to offset all of the Spent Nuclear Fuel contingent fee paid in FY 1999 and FY 2000, FHI shall reimburse any remaining amount to RL.

OFFSET SCHEDULE

Date start of fuel removal is achieved	Offset
On or Before December 7, 2000	None
After December 7, 2000 and On or Before February 7, 2001	33% of the contingent fee paid for FY 1999 and FY 2000 Spent Nuclear Fuels Performance Agreements
After February 7, 2001	100% of the contingent fee paid for FY 1999 and FY 2000 Spent Nuclear Fuels Performance Agreements

B. Changes, and Termination

(1) Identification of Budget and/or Schedule Impacts

FHI shall treat any DOE direction or action that causes an increase or decrease to the Spent Nuclear Fuel Project budget and/or schedule in accordance with the clause entitled, “Changes—Cost Reimbursement.”

(2) Termination

In the event FDH is terminated for default, any fee that is contingent at that time shall be forfeited

H.61 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)

The Contractor or Awardee agrees that none of the funds obligated on this award shall be expended; directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulations.

H.62 LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT, 1999)

The Contractor or Awardee agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulations.

H.62 TRAVEL RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2000)

(a) For contractor travel expenses incurred on or after October 1, 1999, a ceiling limitation of \$1,620,000 shall apply to all reimbursements made for contractor travel expenses, funded by DOE under the FY 2000 Energy & Water Development Appropriations Act, under this contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the contracting officer. Travel costs generally include lodging, meals, incidental expenses, airfare, rental cars and other miscellaneous expenses. Costs associated with certain types of travel are excluded from the ceiling limitation under this clause. Examples of excluded travel types are listed below:

1. Travel performed under work for others agreements if funded by other than Energy & Water Appropriations;
2. Travel of subcontractors (but major PHMC subcontractors are included);
3. Travel of non-DOE users to participate in experiments at DOE user facilities;
4. Travel costs funded by other appropriations;
5. Travel costs of travel management centers;

6. Relocation costs;
 7. Costs of workshops/seminars (other than travel costs), such as, rental of meeting rooms, public address equipment, speakers' fees; and
 8. Registration costs of training classes.
- (b) Notwithstanding any other provisions of the contract, the contractor further agrees that none of the funds obligated under the contract may be used to reimburse employee travel costs incurred on or after October 1, 1999 and before October 1, 2000 which exceed the rate and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code. To the extent that this contract provides elsewhere for the reimbursement of employee travel costs which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code, the preceding limitation on reimbursement of employee travel costs applies to costs incurred on or after December 1, 1999 and before October 1, 2000. Costs, which exceed these rates and amount, will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.
- (c) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
- (i) Federal Travel Regulations (FTR) for travel within the 48 states;
 - (ii) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
 - (iii) Standardized Regulations (SR) for travel allowances in foreign areas.
- (d) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to contractor travel.
- (e) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are allowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

H.57	“324/327 FACILITY TRANSFER”	H-73
H.58	AUTHORIZATION AGREEMENTS	H-73
H.59	LIFE CYCLE ASSET MANAGEMENT GRADED APPROACH.....	H-74
H.60	SPENT NUCLEAR FUELS CONTINGENT FEE.....	H-78
H.61	LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)	H-80
H.62	LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT, 1999).....	H-80
H.63	TRAVEL RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2000)	H-80

(2) Termination

In the event FDH is terminated for default, any fee that is contingent at that time shall be forfeited.

H.61 LOBBYING RESTRICTION (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 1999)

The Contractor or Awardee agrees that none of the funds obligated on this award shall be expended; directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulations.

H.62 LOBBYING RESTRICTION (DEPARTMENT OF INTERIOR & RELATED AGENCIES APPROPRIATIONS ACT, 1999)

The Contractor or Awardee agrees that none of the funds obligated on this award shall be made available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which Congressional action is not complete. This restriction is in addition to those prescribed elsewhere in statute and regulations.

H.63 TRAVEL RESTRICTIONS (ENERGY & WATER DEVELOPMENT APPROPRIATIONS ACT, 2000)

(a) For contractor travel expenses incurred on or after October 1, 1999, a ceiling limitation of \$1,620,000 shall apply to all reimbursements made for contractor travel expenses, funded by DOE under the FY 2000 Energy & Water Development Appropriations Act, under this contract. Expended funds which exceed the established ceiling will be unallowable unless otherwise authorized by the contracting officer. Travel costs generally include lodging, meals, incidental expenses, airfare, rental cars and other miscellaneous expenses. Costs associated with certain types of travel are excluded from the ceiling limitation under this clause. Examples of excluded travel types are listed below:

1. Travel performed under work for others agreements if funded by other than Energy & Water Appropriations;
2. Travel of subcontractors (but major PHMC subcontractors are included);
3. Travel of non-DOE users to participate in experiments at DOE user facilities;

4. Travel costs funded by other appropriations;
 5. Travel costs of travel management centers;
 6. Relocation costs;
 7. Costs of workshops/seminars (other than travel costs), such as, rental of meeting rooms, public address equipment, speakers' fees; and
 8. Registration costs of training classes.
- (b) Notwithstanding any other provisions of the contract, the contractor further agrees that none of the funds obligated under the contract may be used to reimburse employee travel costs incurred on or after October 1, 1999 and before October 1, 2000 which exceed the rate and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code. To the extent that this contract provides elsewhere for the reimbursement of employee travel costs which exceed the rates and amounts that apply to federal employees under subchapter I of Chapter 57 of Title 5, United States Code, the preceding limitation on reimbursement of employee travel costs applies to costs incurred on or after December 1, 1999 and before October 1, 2000. Costs, which exceed these rates and amount, will be unallowable. This restriction is in addition to those prescribed elsewhere in statute or regulation.
- (c) Costs incurred for lodging, meals, and incidental expenses are considered reasonable and allowable to the extent that they do not exceed the maximum per diem rates in effect at the time of travel as set forth in:
- (iv) Federal Travel Regulations (FTR) for travel within the 48 states;
 - (v) Joint Travel Regulations (JTR) for travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, and territories and possessions of the United States; or
 - (vi) Standardized Regulations (SR) for travel allowances in foreign areas.
- (d) Subparagraph (c) does not incorporate the regulations cited above in their entirety. Only the coverages in the referenced regulations addressing the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and special or unusual situations are applicable to contractor travel.
- (e) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are allowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

recognized by the Environmental Protection Agency as appropriate for addressing hazardous substance threats where a planning horizon of six months or more is appropriate. Removal responses, including non-time-critical removals are the subject of 40 CFR 300.410 and 300.415. Under a signed agreement with EPA, the Department uses a non-time-critical removal approach tailored for DOE's decommissioning of contaminated facilities. That approach comprises threat assessment; identification, analysis, and documentation of decommissioning alternatives; opportunities for public participation in the decommissioning decision; and planning and performance of decommissioning activities. Under the DOE/EPA agreement, regulator involvement in decommissioning is determined locally.

- (c) The development of a final report, or equivalent document, for each deactivation and/or decommissioning project. Where deactivation and decommissions are conducted as a single, uninterrupted activity, only one final report, or equivalent, is required.
- E. In the acquisition, operation, maintenance, leasing and disposition of physical assets, the Contractor shall ensure that all applicable Federal, state, and local laws, regulations, and negotiated agreements are followed, and that applicable safeguards and security as well as integrated safety management requirements and policies are followed.

H.60 SPENT NUCLEAR FUELS CONTINGENT FEE

A. Start of Fuel Removal

FHI agrees that its retention of any fee paid in excess of \$1 million for fiscal year (FY) 1999 Spent Nuclear Fuel Performance Agreements and any fee paid in excess of \$1 million for FY 2000 Spent Nuclear Fuels Performance Agreements will be contingent upon the successful start of fuel removal from the K Basins by December 7, 2000. In addition, if fuel removal is not successfully started by December 7, 2000, then any fee allocated, in FY 2001, for the start of fuel removal cannot be earned.

As set forth in the Tri-Party Agreement (TPA) Milestone P-34-16 (as of December 2, 1998) and for purposes of this clause, the start of spent nuclear fuel removal is defined as "The Cold Vacuum Drying (CVD) Facility and Canister Storage Building (CSB) shall be ready to receive spent nuclear fuel. The spent nuclear fuel transport system shall be operable. The K West Basin spent nuclear fuel retrieval system shall begin retrieving, cleaning, and packaging spent nuclear fuel, and the First Multi-Canister Over Pack of

spent nuclear fuel will be loaded and transported to the Cold Vacuum Drying Facility for processing.”

If FHI fails to achieve a successful start of fuel removal from the K Basins by December 7, 2000, and therefore FHI fails the condition subsequent to retain the contingent portion of fee paid on Spent Nuclear Fuels Performance Agreements in FY 1999 and FY 2000, then the contingent fee paid will be offset against any FHI fee earned in FY 2001 in accordance with the Schedule below. Furthermore, notwithstanding any other provision in this Contract, including but not limited to, “Performance, Objectives, Measures, Expectations and Fee Distribution,” if FHI’s total earned fee in FY 2001 is insufficient to offset all of the Spent Nuclear Fuel contingent fee paid in FY 1999 and FY 2000, FHI shall reimburse any remaining amount to RL.

OFFSET SCHEDULE

Date start of fuel removal is achieved	Offset
On or Before December 7, 2000	None
After December 7, 2000 and On or Before February 7, 2001	33% of the contingent fee paid for FY 1999 and FY 2000 Spent Nuclear Fuels Performance Agreements
After February 7, 2001	100% of the contingent fee paid for FY 1999 and FY 2000 Spent Nuclear Fuels Performance Agreements

B. Changes, and Termination

(1) Identification of Budget and/or Schedule Impacts

FHI shall treat any DOE direction or action that causes an increase or decrease to the Spent Nuclear Fuel Project budget and/or schedule in accordance with the clause entitled, “Changes—Cost Reimbursement.”