

1989

John Wagner Associates v. Hercules, Inc. : Brief of Appellant

Utah Court of Appeals

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BRIEF

UTAH
DOCUMENT
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DOCKET NO.

IN THE COURT OF APPEALS OF THE STATE OF UTAH

890017-CA

* * * * *

JOHN WAGNER ASSOCIATES,
d/b/a GRABBER UTAH,

:
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:
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:
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:
:
:
:

Plaintiff-Appellant,

CASE NO. 890017-CA

vs.

HERCULES, INC.,

Category No. 14b

Defendant-Respondent.

* * * * *

SUPPLEMENTARY ADDENDUM TO APPELLANT'S BRIEF

CONTAINING COPIES OF RECORD CITED

* * * * *

IN THE COURT OF APPEALS OF THE STATE OF UTAH

* * * * *

JOHN WAGNER ASSOCIATES,	:	
d/b/a GRABBER UTAH,	:	
	:	
Plaintiff-Appellant,	:	CASE NO. 890017-CA
	:	
vs.	:	
	:	Category No. 14b
HERCULES, INC.,	:	
	:	
Defendant-Respondent.	:	

* * * * *

SUPPLEMENTARY ADDENDUM TO APPELLANT'S BRIEF

CONTAINING COPIES OF RECORD CITED

* * * * *

WHEN RECORDED MAIL TO:

Brent P. Lorimer, Esq.
FOX, EDWARDS, GARDINER & BROWN
P. O. Box 45450
Salt Lake City, Utah 84145

RECEIVED
SALT LAKE COUNTY,
UTAH
DEC 5 4 13 PM '85
J. H. K. K. K.
K. K. K. K. K.

4172790

NOTICE OF LIEN

The undersigned, JOHN WAGNER & ASSOCIATES, dba Grabber Utah, hereby gives notice of its intention to claim a lien upon the leasehold interest of Hercules, Inc. in and to certain real property and improvements located thereon. The leasehold interest is reputed to be owned by Hercules, Inc. The leasehold interest and this lien affect certain real property located at approximately 4100 South and 8400 West, Salt Lake County, Utah, which is more particularly described as set forth in Exhibit "A", attached hereto and incorporated herein by this reference.

John Wagner & Associates, dba Grabber Utah, claims this lien by virtue of U.C.A. §38-1-1, et seq. In support of this lien, John Wagner & Associates, dba Grabber Utah, avers that it furnished certain materials to Space Building Systems, 220 W. 2855 South, South Salt Lake, Utah, who was at all times material hereto a subcontractor, acting as the agent of the owner or reputed owner of the above-referenced leasehold. Space Building Systems agreed to pay John Wagner & Associates, dba Grabber Utah, for the materials so furnished within thirty days of delivery, with all past due payments subject to an interest charge of 18% per annum. The first materials were furnished to Space Building Systems by John Wagner & Associates, dba Grabber Utah, for incorporation into the improvements upon the above-referenced real property on July 8, 1985, and the last materials were so furnished to Space Building Systems on September 26, 1985. The total amount owing to John Wagner & Associates, dba Grabber Utah, on the above-referenced account, after deducting all just credits and offsets, is \$14,300.03, plus interest, costs and attorney's fees. This lien affects annex 15 and annex 16 at the subject property.

DATED this 5 day of December, 1985.

JOHN WAGNER & ASSOCIATES, dba
Grabber Utah

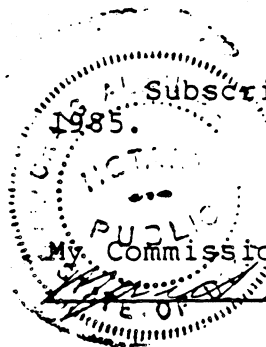
By Robert M. Samson
Its Manager

5715 1421

000015

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Robert M. Spencer, having first been duly sworn upon his oath, states that he is the MANAGER of John Wagner & Associates, dba Grabber Utah, claimant in the foregoing Notice of Lien, that he has authority for John Wagner & Associates, dba Grabber Utah, to execute same, that he has read and executed the foregoing Notice of Lien and that the same is true and correct of his own personal knowledge.



Subscribed and sworn to before me this 5 day of December,

Robert M. Spencer

Craig Alan Bliss

NOTARY PUBLIC

Residing at: Salt Lake

834 5715 FTS 1422

EXHIBIT "A"

BEG N 88°46'54" E 45 FT FR N 1/4 COR SEC 5, T 2S, R 2W, S L
M; N 88°46'54" E 2623.16 FT; N 88°48'37" E 2654.07 FT; N
88°45'33" E 2670.87 FT TO NE COR SEC 4; S ALG SD SEC LINE
2556 FT TO HERCULES POWDER CO TRACT; W 4564 FT; N 576 FT; W
3137.26 FT; N 45°03' W 154.58 FT; N 0°13'19" W 122.19 FT; N
2°31'19" W 500 FT; N 1°22'34" W 1164 FT TO BEG. LESS UTAH
COPPER DITCH & STATE ROAD. LESS THAT PORTION OUTSIDE MAGNA
WATER CO. 54.75 AC, M OR L. 1873-407

FILMED

FILED IN CLERK'S OFFICE

FEB 17 3 54 PM '06

U.S. DISTRICT COURT

JAMES B. LEE (A1919)
JAMES M. ELEGANTE (A0968)
of and for
PARSONS, BEHLE & LATIMER
Attorneys for Defendant
Hercules, Inc.
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, UT 84147-0898
Telephone: (801) 532-1234

Nancy E. [Signature]

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

* * * * *

JOHN WAGNER ASSOCIATES,)	
d/b/a GRABBER UTAH,)	
)	ANSWER TO COMPLAINT
Plaintiff,)	
)	
vs.)	
)	Civil No. C86-404
HERCULES, INC., MODULAIRE)	
INDUSTRIES, INC. and JOHN)	Judge Banks
DOES I-X,)	
)	
Defendants.)	

* * * * *

Defendant, Hercules, Inc., by and through its attorneys, hereby answers plaintiff's Complaint as follows:

1. Answering paragraph 1 of the complaint, plaintiff is without sufficient knowledge to form a belief as to the truth of the allegations therein, and therefore denies the same.

2. Answering paragraph 2 of the complaint, defendant denies that it is a Utah corporation and that it has its

principal place of business in Salt Lake County, State of Utah, and defendant states affirmatively that it is a Delaware corporation and that it does business in Salt Lake County, State of Utah.

3. Answering paragraph 3 of the complaint, defendant is without sufficient knowledge to form an opinion as to the truth of the allegations therein, and therefore denies the same.

4. Answering paragraph 4 of the complaint, defendant is without sufficient information to form an opinion as to the truth of the allegations therein, and therefore denies the same.

5. Answering paragraph 5 of the complaint, defendant admits that this court has subject matter and in personam jurisdiction, but denies the remaining allegations therein.

6. Answering paragraph 6 of the complaint, defendant admits that venue is proper in this court.

7. Answering paragraph 7 of the complaint, defendant denies that it is the owner of a leasehold or other similar interest in the property described in Exhibit A to the complaint, and defendant states affirmatively that it uses the property pursuant to a contract with the Government of the United States, the owner of the property.

8. Answering paragraph 8 of the complaint, defendant admits that on June 7, 1985 it gave a purchase order to defendant Modulaire Industries, Inc. ("Modulaire") under which

Modulaire agreed to provide two mobile office complexes to defendant for its use, which complexes were to be located on land owned by the government, and defendant further admits that the purchase order exceeded \$2,000, but defendant denies the remaining allegations therein.

9. Answering paragraph 9 of the complaint, defendant denies that it entered into an agreement with Space Building Systems and defendant is without sufficient information to form a belief as to the truth of the remaining allegations therein and therefore denies the same.

10. Answering paragraph 10 of the complaint, defendant incorporate its answers hereinabove.

11. Answering paragraph 11 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

12. Answering paragraph 12 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

13. Answering paragraph 13 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

14. Answering paragraph 14 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

15. Answering paragraph 15 of the complaint, defendant denies the allegations therein.

16. Answering paragraph 16 of the complaint, defendant admits that it received a copy of Exhibit C to the complaint in December, 1985, but defendant denies the remaining allegations therein.

17. Answering paragraph 17 of the complaint, defendant denies the allegations therein.

18. Answering paragraph 18 of the complaint, defendant denies the allegations therein.

19. Answering paragraph 19 of the complaint, defendant denies the allegations therein.

20. Answering paragraph 20 of the complaint, defendant denies the allegations therein.

21. Answering paragraph 21 of the complaint, defendant incorporates its answers hereinabove.

22. Answering paragraph 22 of the complaint, defendant admits that its purchase order with Modulaire exceeded \$2,000, but defendant denies the remaining allegations therein.

23. Answering paragraph 23 of the complaint, defendant denies the allegations therein.

24. Answering paragraph 24 of the complaint, defendant admits that on December 10, 1985, plaintiff's counsel, by letter, made demand upon Hercules, Inc. to furnish copies of a payment bond in connection with its agreement with defendant Modulaire, and defendant admits further that it did not provide a bond for examination by plaintiff, but defendant states affirmatively that it had no obligation to provide a bond as a result of its agreement with defendant Modulaire and that therefore there was no bond to provide to plaintiff, and defendant denies the remaining allegations therein.

25. Answering paragraph 25 of the complaint, defendant admits that it has provided no bond as contemplated by Section 14-2-1 et seq., Utah Code Ann., with respect to its contract with Modulaire, but defendant denies the remaining allegations therein.

26. Answering paragraph 26 of the complaint, defendant denies the allegations therein.

27. Answering paragraph 27 of the complaint, defendant denies the allegations therein.

28. Answering paragraph 28 of the complaint, defendant incorporates its answers hereinabove.

29. Answering paragraph 29 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

30. Answering paragraph 30 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

31. Answering paragraph 31 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

32. Answering paragraph 32 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

33. Answering paragraph 33 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

34. Answering paragraph 34 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

35. Answering paragraph 35 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

36. Answering paragraph 36 of the complaint, defendant is without sufficient information to form a belief as to the truth of the allegations therein, and therefore denies the same.

37. Defendant denies each and every allegation not specifically answered above.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to state a cause of action upon which relief can be granted against defendant, Hercules, Inc.

SECOND AFFIRMATIVE DEFENSE

Defendant Hercules, Inc. has no interest in the land, described in Exhibit A to the Complaint, which could properly be the subject of a lien pursuant to Title 38, Chapter 1, Utah Code Ann.

THIRD AFFIRMATIVE DEFENSE

The agreement for the acquisition by defendant, Hercules, Inc. of mobile office complexes from defendant Modulaire Industries, Inc. and plaintiff's participation in or contribution to the fulfillment of that agreement do not constitute construction, alteration, or improvement of any building or structure or improvement to any premises by virtue of

which plaintiff can obtain a lien pursuant to Title 38, Chapter 1, Utah Code Ann.

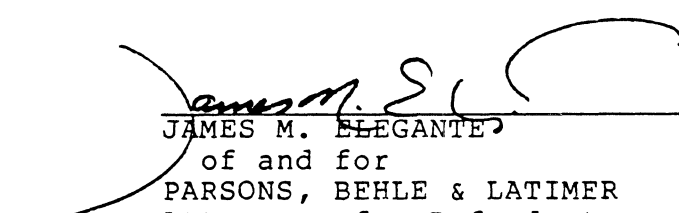
FOURTH AFFIRMATIVE DEFENSE

Space Building Systems is an indispensable party without the presence of which complete relief cannot be accorded among the parties to this action.

FIFTH AFFIRMATIVE DEFENSE

The basis for plaintiff's action as alleged in its complaint is the subject of a petition in bankruptcy brought by Space Building Systems and, should its debt to plaintiff be discharged in bankruptcy, this claim likewise is discharged.

DATED this 12th day of February, 1986.


JAMES M. ELEGANTE

of and for
PARSONS, BEHLE & LATIMER
Attorneys for Defendant
Hercules, Inc.

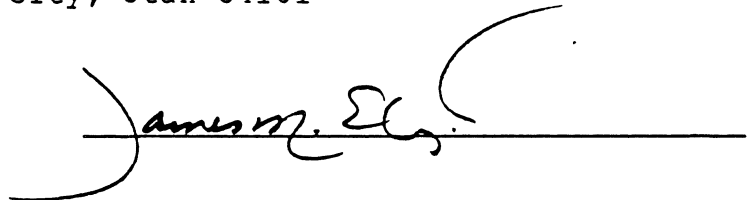
185 South State Street, Suite 700
P. O. Box 11898
Salt Lake City, UT 84147-0898
Telephone: (801) 532-1234

MAILING CERTIFICATE

I hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing ANSWER TO COMPLAINT to the following on this 13th day of February, 1986:

Brent P. Lorimer
Fox, Edwards, Gardiner & Brown
P.O. Box 3450
Salt Lake City, Utah 84110

Steven T. Waterman
Watkiss & Campbell
310 South Main Street, #1200
Salt Lake City, Utah 84101

A handwritten signature, likely "James M. Elger", is written in dark ink over a horizontal line. The signature is stylized with a large, sweeping initial 'J' and a distinct 'E'.

1841J

FILMEDFILED IN CLERK'S OFFICE
SALT LAKE COUNTY, UTAH

JUL 13 4 21 PM '87

Karen C. Jensen (1680)
 Steven T. Waterman (4164)
WATKISS & CAMPBELL
 310 South Main, Suite 1200
 Salt Lake City, Utah 84101
 Telephone: (801) 363-3300

H. C. JENSEN
Linda Simpson
 1987 JUL 13

Attorneys for Defendant, Modulaire Industries, Inc.

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

JOHN WAGNER ASSOCIATES,
 dba GRABBER UTAH,

Plaintiff,

vs.

HERCULES, INC., MODULAIRE
 INDUSTRIES,
 I - X,

Civil No. C86-404
 (Judge Uno)

ERRONEOUS CITATION IN BRIEF

SHOULD BE R. AT 233

VIT OF
 LEACH

STATE OF U'

COUNTY OF

Chilton Leach, being first duly sworn, deposes and states:

1. I have personal knowledge of the facts contained herein and would testify regarding such facts if called as a witness in the above-entitled action.

2. I am the Northern Division Operations Manager, which division includes Utah, of Modulaire Industries (hereinafter "Modulaire"), the Defendant in this proceeding, and I am authorized by Modulaire to execute this affidavit.

WATKISS & CAMPBELL

ATTORNEYS AT LAW

TWELFTH FLOOR, 310 SOUTH MAIN STREET
 SALT LAKE CITY, UTAH 84101-2171

000168

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UTAH

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3420

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Danna Johnson
Authorized Signature

000172

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3421

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000173

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UTAH

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3422

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000174

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3423

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000175

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3424

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000176

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UTAH

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3425

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000177

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UTAH

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3426

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Diana Johnson
Authorized Signature

000178

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3427

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianne Johnson
Authorized Signature

000179

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEII 1460 3428

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000180

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3429

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000181

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3430

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson

Authorized Signature

000182

MANUFACTURER'S STATEMENT OF ORIGIN TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3431

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000183

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor
vehicle described below, the property of said CORPORATION, has been
transferred this 30TH day of MAY, 19 85

on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3432

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of
such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson

Authorized Signature

000184

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3433

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianne Johnson
Authorized Signature

000185

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3434

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianne Johnson
Authorized Signature

000186

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE

Serial No. SHE11 1460 3435

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Danna Johnson
Authorized Signature

000187

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3436

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000188

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3437

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000189

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UTAH

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3443

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000190

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3438

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000191

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3439

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000192

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3440

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianne Johnson
Authorized Signature

000193

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3441

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000194

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UTAH

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3442

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000195

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHE11 1460 3444

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Danna Johnson
Authorized Signature

000196

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 1985 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3445

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000197

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3446

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000198

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES
Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____
Body Type: OFFICE Serial No. SHEII 1460 3447

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson
Authorized Signature

000199

MANUFACTURER'S STATEMENT OF ORIGIN
TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY, 19 85 on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3448

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Dianna Johnson

Authorized Signature

000200

00000000

MANUFACTURER'S STATEMENT OF ORIGIN TO A MOTOR VEHICLE

The undersigned CORPORATION hereby certifies that the new motor vehicle described below, the property of said CORPORATION, has been transferred this 30TH day of MAY 1985

on Invoice No. _____

To MODULAIRE INDUSTRIES

Address MURRAY, UT

TRADE NAME: BONNEVILLE Year: 1985 Model No. _____

Body Type: OFFICE Serial No. SHEU 1460 3449

Shipping Weight 14,500

The CORPORATION further certifies that this was the first transfer of such new Modular building in ordinary trade and commerce.



Modulaire Manufacturing
a Division of
MODULAIRE INDUSTRIES

4700 South Riverside Drive
Murray, Utah 84123

Danna Johnson
Authorized Signature

000201



HER 13326-10 (9-83)

PURCHASE ORDER

COPY

HERCULES AEROSPACE - BACCHUS WORKS
MAGNA, UT 84404
(801) 250-5911

PAGE: 1

REQUIRED DATE	VIA	BUS. CODE		F.O.B.		PURCHASE ORDER NO.		SUPP.
08/15/85	VENDOR'S TRUCK	CO		SP FPPD, CHGBAC		BACC07061		
BUYER	C/C	IND CL	TYPE CONTR	TERMS			DATE	
R. C. WARING	C	SO	FP	NET CASH			06/07/85	

Ship to:

HERCULES INC
BACCHUS WORKS

BACCHUS UT 84044

INSTRUCTIONS
TO VENDOR

- 1 MAIL ACKNOWLEDGEMENT AND THREE COPIES OF YOUR INVOICE TO ABOVE
 - 2 SHOW PURCHASE ORDER NO ON EACH PACKAGE, PACKING SLIP, BILL OF INVOICE, AND ALL OTHER CORRESPONDENCE
 3. LEGIBLE PACKING SLIP MUST ACCOMPANY ALL SHIPMENTS AND REFEREN NO AND LINE ITEM NO
 - 4 COPY OF PACKING SLIP BILL OF LADING, OR EXPRESS RECEIPT MUST ACCO INVOICE
 - 5 TRANSPORTATION CHARGES APPEARING ON ALL INVOICE MUST BE SUPP BY RECEIPTED FREIGHT BILL OR RECEIPTED EXPRESS BILL
- DO NOT ADD UTAH SALES/USE TAX ON YOUR INVOICE. HERCULES INCORPORATE SELF-ADDRESS AND PAY UTAH SALES/USE TAX DIRECT TO THE STATE OF UTAH APPROPRIATE PER TAX EXEMPTION CERTIFICATE NUMBER 89072.

Vendor

0603301077
MODULAIRE INDUSTRIES
744 MONTGOMERY ST
SAN FRANCISCO CA 94111

ITEM	DESCRIPTION	QUANTITY	PRICE	UNIT	AMC
	DO NOT DUPLICATE. THIS ORDER CONFIRMS VERBAL CONTRACT				
	THIS PURCHASE ORDER IS ISSUED TO LEASE THE FOLLOWING TWO COMPLEXES; A 19-UNIT COMPLEX (TO BE KNOWN AS ANNEX 15), FROM SEPTEMBER 6, 1985 THRU SEPTEMBER 5, 1987, AND AN 11-UNIT COMPLEX (TO BE KNOWN AS ANNEX 16), FROM SEPTEMBER 20, 1985 THRU SEPTEMBER 19, 1987 - WITH AN OPTION TO EXTEND THE LEASES.				
1	LEASE 30 UNITS, 14' X 60' EACH, MODULAR OFFICE UNITS, TO COMPRISE ANNEXES 15 & 16, FOR TWENTY-FOUR MONTH PERIODS, WITH AN OPTION TO EXTEND THE LEASES. PROPERTY NUMBERS L-636 & L-637 ARE ASSIGNED TO THESE COMPLEXES. THESE COMPLEXES WILL BE BUILT TO HERCULES SPECIFICATION NO. 9106.	XXX	XXXXXXX		
2	SERVICE DELIVERY, INSTALLATION AND SETUP, INCLUDING SKIRTING AND HEAVY DUTY STAIRS AT EACH ENTRANCE. LEASE COSTS AND ONE-TIME CHARGES: MONTHLY LEASE COST: 19-UNIT COMPLEX \$9,873.00/MONTH X 24 MONTHS = \$236,952.00 PLUS ONE-TIME CHARGES TO BE BILLED SEPARATELY DELIVERY, SET-UP AND SKIRTING = 18,235.00 TOTAL LEASE AND ONE-TIME CHARGES = \$255,187.00 MONTHLY LEASE COST: 11-UNIT COMPLEX \$6,317.00/MONTH X 24 MONTHS = \$151,608.00 PLUS ONE-TIME CHARGES TO BE BILLED SEPARATELY DELIVERY, SET-UP AND SKIRTING 12,471.00 TOTAL LEASE AND ONE-TIME CHARGES = \$164,079.00 GRAND TOTAL BOTH COMPLEXES = \$419,266.00 NOTE: IF AND WHEN NEEDED, THE FOLLOWING COSTS WILL	XXX	XXXXXXX		

000217

ORIGINAL COPY

WILLIAM M. PIERCE, PURCHASING MANAGER

BY



HER 13378-10 (9-83)

PURCHASE ORDER

COPY

HERCULES AEROSPACE - BACCHUS WORKS
MAGNA, UT 84404
(801) 250-5911

PAGE: 2 0

REQUIRED DATE	VIA	BUS. CODE	F.O.B.	PURCHASE ORDER NO.	SUPL.
08/15/85	VENDOR'S TRUCK	CO	SP FPPD.CHGBAC	BACC07061	
BUYER	CC	IND CL	TYPE CONTR	TERMS	DATE
R. C. WARING	C	SO	FP	NET CASH	06/07/85

Ship to:

HERCULES INC
BACCHUS WORKS

BACCHUS UT 84044

INSTRUCTIONS
TO VENDOR

1. MAIL ACKNOWLEDGEMENT AND THREE COPIES OF YOUR INVOICE TO ADD ABOVE
 2. SHOW PURCHASE ORDER NO. ON EACH PACKAGE, PACKING SLIP, BILL OF LADING, AND ALL OTHER CORRESPONDENCE
 3. LEGIBLE PACKING SLIP MUST ACCOMPANY ALL SHIPMENTS AND REFERENCE NO. AND LINE ITEM NO.
 4. COPY OF PACKING SLIP, BILL OF LADING, OR EXPRESS RECEIPT MUST ACCOMPANY INVOICE.
 5. TRANSPORTATION CHARGES APPEARING ON ALL INVOICE MUST BE SUPPORTED BY RECEIPTED FREIGHT BILL OR RECEIPTED EXPRESS BILL.
- DO NOT ADD UTAH SALES/USE TAX ON YOUR INVOICE. HERCULES INCORPORATED SELF-ADDRESS AND PAY UTAH SALES/USE TAX DIRECT TO THE STATE OF UTAH WITH APPROPRIATE PER TAX EXEMPTION CERTIFICATE NUMBER 89072.

Vendor

0603301077
MODULAIRE INDUSTRIES
744 MONTGOMERY ST
SAN FRANCISCO CA 94111

ITEM	DESCRIPTION	QUANTITY	PRICE	UNIT	AMOUNT
	BE APPLICABLE: 19-UNIT 11-UNIT DISMANTLE.....\$9,500.00..\$4,180.00 RETURN DELIVERY..\$5,500.00..\$2,420.00				
	• • ** THIS PURCHASE ORDER NOT TO EXCEED \$419,266.00 ** •				
	DELIVERY REQUIREMENTS: DELIVER TO HERCULES BACCHUS WORKS AND LOCATE NW OF BUILDING 16 AT 4100 SOUTH AND 8400 WEST. INSTALLATION TO BE COMPLETE AS SOON AS POSSIBLE. HERCULES WILL BE RESPONSIBLE FOR SITE PREPARATION, SEWER, WATER AND ELECTRICAL SERVICE HOOKUPS.				
	•				
	SAFETY REQUIREMENTS				
	1. THIS IS NOT EXPLOSIVE OR HAZARDOUS. 2. OSHA RULES AND REGULATIONS APPLY.				
	NONCONFORMING ITEMS AS OFFERED BY THE SUPPLIER MAY BE REJECTED OR ACCEPTED AT THE SOLE OPTION OF THE BUYER. ANY SUCH ACCEPTANCE WILL RESULT IN NEGOTIATIONS FOR AN EQUITABLE ADJUSTMENT IN PRICE.				
	PRICE WARRANTY - SUPPLIER CERTIFIES THAT THE PRICES REFLECTED HEREIN DO NOT EXCEED THE CURRENT SELLING PRICE OR PRICES FOR THE SAME OR SUBSTANTIALLY THE SAME ARTICLES OR SERVICES THAT ARE SOLD TO THE GOVERNMENT OR TO ANY OTHER PURCHASER, TAKING INTO ACCOUNT THE QUANTITY AND QUALITY UNDER CONSIDERATION.				
	INDEMNIFICATION - THE SUPPLIER AGREES THAT WHEN ITS EMPLOYEES, AGENTS, CONTRACTORS AND/OR LOWER-TIER SUB-CONTRACTORS ENTER PREMISES OCCUPIED BY OR UNDER THE CONTROL OF HERCULES IN THE PERFORMANCE OF THIS ORDER, SUPPLIER AGREES THAT IT WILL INDEMNIFY AND HOLD HARMLESS HERCULES, ITS OFFICERS AND EMPLOYEES				
					000218

WILLIAM M. PIERCE, PURCHASING MANAGER

BY

ORIGINAL COPY



HER 13328-10 (9-83)

PURCHASE ORDER

COPY

HERCULES AEROSPACE - BACCHUS WORKS
MAGNA, UT 84404
(801) 250-5911

PAGE: 3 of 1

REQUIRED DATE	VIA	BUS CODE		F.O.B.	PURCHASE ORDER NO.	SUP.
08/15/85	VENDOR'S TRUCK	C0		SP FPPD.CHGBAC	BACC07061	
BUYER	C/C	IND CL	TYPE CONTR	TERMS	DATE	
R. C. WARING	C	SO	FP	NET CASH	06/07/85	

Ship to:

HERCULES INC
BACCHUS WORKS

BACCHUS UT 84044

INSTRUCTIONS
TO VENDOR

- 1 MAIL ACKNOWLEDGEMENT AND THREE COPIES OF YOUR INVOICE TO ADD ABOVE
 - 2 SHOW PURCHASE ORDER NO. ON EACH PACKAGE, PACKING SLIP, BILL OF LADING, INVOICE, AND ALL OTHER CORRESPONDENCE
 - 3 LEGIBLE PACKING SLIP MUST ACCOMPANY ALL SHIPMENTS AND REFERENCE NO. AND LINE ITEM NO.
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- DO NOT ADD UTAH SALES/USE TAX ON YOUR INVOICE. HERCULES INCORPORATED SELF-ADDRESSES AND PAY UTAH SALES/USE TAX DIRECT TO THE STATE OF UTAH WITH APPROPRIATE PER TAX EXEMPTION CERTIFICATE NUMBER 89072.

Vendor

0603301077
MODULAIRE INDUSTRIES
744 MONTGOMERY ST
SAN FRANCISCO CA 94111

ITEM	DESCRIPTION	QUANTITY	PRICE	UNIT	AMOUNT
	<p>FROM ANY LOSS, COST, DAMAGE, EXPENSE, OR LIABILITY BY REASON OF PROPERTY DAMAGE OR PERSONAL INJURY OF WHATSOEVER NATURE OR KIND ARISING OUT OF, AS A RESULT OF, OR IN CONNECTION WITH, SUCH PERFORMANCE OCCASIONED IN WHOLE OR IN PART BY THE ACTIONS OR OMISSIONS OF THE SUPPLIER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, AND/OR LOWER-TIER SUBCONTRACTORS. THE SUPPLIER ALSO AGREES THAT IT WILL MAINTAIN PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE IN REASONABLE LIMITS COVERING THE OBLIGATIONS SET FORTH ABOVE AND WILL MAINTAIN PROPER WORKMEN'S COMPENSATION INSURANCE COVERING ALL EMPLOYEES RENDERING PERFORMANCE UNDER THIS ORDER.</p> <p>• ANNEX 15:</p> <p>LEASE EXTENSION OPTION: IF HERCULES DEEMS IT NECESSARY TO EXTEND THE LEASE OF THE SUBJECT 19-UNIT COMPLEX BEYOND THE INITIAL TWO YEAR PERIOD, THE EXTENDED LEASE RATE WILL BE NEGOTIATED, BUT WILL IN NO CASE BE HIGHER THAN THE PRESENT MONTHLY RATE OF \$9,873.00 .</p> <p>• ANNEX 16:</p> <p>LEASE EXTENSION OPTION: IF HERCULES DEEMS IT NECESSARY TO EXTEND THE LEASE OF THE SUBJECT 11-UNIT COMPLEX BEYOND THE INITIAL TWO YEAR PERIOD, THE EXTENDED LEASE RATE WILL BE NEGOTIATED, BUT WILL IN NO CASE BE HIGHER THAN THE PRESENT MONTHLY RATE OF \$6,317.00 .</p> <p>• ANNEX 15:</p> <p>RECAPTURE PROVISIONS: IT IS NOTED THAT THE SUBJECT MOBILE OFFICE COMPLEX HAS A PURCHASE PRICE OF \$533,377.00 (PLUS TAX) AT THE TIME THIS LEASE COMMENCES. THE SUPPLIER HAS OFFERED AND HERCULES HAS ACCEPTED A 50% RECAPTURE PROVISION: THAT IS ANY-TIME DURING THIS LEASE, HERCULES MAY EXERCISE A BUY OPTION AND IN SO DOING APPLY 50% OF THE PREVIOUSLY</p>				

000219

ORIGINAL COPY

WILLIAM M. PIERCE, PURCHASING MANAGER

BY

DATE

10-2-85



HER 13328-10 (9-83)

PURCHASE ORDER

COPY HERCULES AEROSPACE - BACCHUS WORKS
MAGNA, UT 84404
(801) 250-5911

PAGE: 4 of 4

REQUIRED DATE	VIA	BUS CODE		F.O.B.		PURCHASE ORDER NO.		SUPL
08/15/85	VENDOR'S TRUCK	C0		SP FPPD.CHG8AC		BACC07061		
BUYER	CC	IND CL	TYPE CONTR	TERMS			DATE	
R. C. WARING	C	SO	FP	NET CASH			06/07/85	

Ship to:

HERCULES INC
BACCHUS WORKS

BACCHUS UT 84044

INSTRUCTIONS
TO VENDOR

1. MAIL ACKNOWLEDGEMENT AND THREE COPIES OF YOUR INVOICE TO ADD ABOVE
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 4. COPY OF PACKING SLIP, BILL OF LADING, OR EXPRESS RECEIPT MUST ACCOMPANY INVOICE.
 5. TRANSPORTATION CHARGES APPEARING ON ALL INVOICE MUST BE SUPPORTED BY RECEIPTED FREIGHT BILL OR RECEIPTED EXPRESS BILL.
- DO NOT ADD UTAH SALES/USE TAX ON YOUR INVOICE. HERCULES INCORPORATED WILL SELF-ADDRESS AND PAY UTAH SALES/USE TAX DIRECT TO THE STATE OF UTAH WHEN APPROPRIATE PER TAX EXEMPTION CERTIFICATE NUMBER 89072.

Vendor

0603301077
MODULAIRE INDUSTRIES
744 MONTGOMERY ST
SAN FRANCISCO CA 94111

ITEM	DESCRIPTION	QUANTITY	PRICE	UNIT	AMOUNT
	MADE LEASE PAYMENTS TOWARD PURCHASE. THIS RECAPTURE APPLIES TO INITIAL 2 YEAR LEASE PAYMENTS ONLY. ANNEX 16: RECAPTURE PROVISIONS: IT IS NOTED THAT THE SUBJECT MOBILE OFFICE COMPLEX HAS A PURCHASE PRICE OF \$336,288.00 (PLUS TAX) AT THE TIME THIS LEASE COMMENCES. THE SUPPLIER HAS OFFERED AND HERCULES HAS ACCEPTED A 50% RECAPTURE PROVISION; THAT IS ANY-TIME DURING THIS LEASE, HERCULES MAY EXERCISE A BUY OPTION AND IN SO DOING APPLY 50% OF THE PREVIOUSLY MADE LEASE PAYMENTS TOWARD PURCHASE. THIS RECAPTURE APPLIES TO INITIAL 2 YEAR LEASE PAYMENTS ONLY. OTHER TERMS AND CONDITIONS OF LEASE: 1. ALL APPLICABLE PROPERTY TAX DURING THIS LEASE WILL PAID BY THE LESSOR. MODULAIRE INDUSTRIES 2. INSURANCE - HERCULES IS SELF-INSURED UP TO \$100,000 AND IS INSURED BY A COMMERCIAL CARRIER OVER THIS AMOUNT AND AS SUCH WARRANTS THAT ADEQUATE INSURANCE COVERAGE EXISTS WHICH PROTECTS THE SUBJECT OFFICE COMPLEX AGAINST LOSS, DAMAGE, ETC.. 3. REPAIR AND MAINTENANCE - ANY REPAIR OR MAINTENANCE IN THE SHELL OF THE OFFICE COMPLEX, THE AIR CONDITIONING OR HEATING SYSTEM AND ETC. (EXCEPT ROUTINE JANITORIAL MAINTENANCE) WILL BE THE RESPONSIBILITY OF THE LESSOR, MODULAIRE INDUSTRIES . . . THIS PURCHASE ORDER NOT TO EXCEED				\$419,26
					000220

ORIGINAL COPY

WILLIAM M. PIERCE, PURCHASING MANAGER

BY

SPECIFICATION NO. 9106

MOBILE TRAILER LEASING
HERCULES INCORPORATED

BACCHUS WORKS
MAGNA, UTAH

MAY 1985
9578j

This specification states the requirements for leasing mobile trailers as they relate to the product and the vendor.

- a. Dimensions - A standard module size shall be 14' x 60'. Inside ceiling height shall be 8". All units shall be built with new quality materials according to the industry's Commercial Codes and Standards.
- b. Exterior - The exterior shall be covered with pre-finished Hi-Rib steel siding and trim over a 1/2-inch gypsum underlayment. All seams shall be locked and weatherproof. Wall color shall be a standard off-white. Roof trim color to be dark brown. Exterior walls shall be windowless.
- c. Skirting - Skirting shall be hi-rib steel siding to match exterior supported by a full wooden frame. Color shall be dark brown. Access doors shall be provided as designated by Hercules at the time of installation. Skirting shall be provided completely around exterior.
- d. Roof - The roof shall be properly sloped, covered and sealed using standing seam metal design. Full length rain metal guttering shall be provided to control runoff and protect entrances and stairways, color to match skirting. Guttering shall be installed at the site.

Steel roof beams or trusses shall be clear span the 60 ft. width of the trailer complex. The roof design live load shall be 40 psf.

- e. Chassis - The frame shall consist of two (2) longitudinal MPC 10 x 8.4 I-Beam members at 99.5" O.C. joined by 4" x 13 gauge cross members at 4' O.C. and front and rear plates of MPC 10 x 8.4 I-Beam.

26 G.A.

000221

- f. Floor - The floor loading shall be 75 psf, unless designated otherwise.

Floor seams between modules shall be smooth under the floor covering. All floors shall be weather sealed and vermin proof. All floors shall be covered with Herculon carpeting with the exception of rest rooms and utility areas where continuous vinyl flooring shall be used. The colors and styles shall be selected by Hercules.

- g. Interior Walls - The walls shall be vinyl covered gypsum in halls and office areas. At least two contrasting colors shall be selected by Hercules. Rest room walls shall be white Marlite or equivalent. Walls shall be straight vertical and supported to minimize deflection. Trim shall be provided in corners, at edges and other locations as required. Trim color shall be dark brown. Wall base to be 4 in. min. matching trim or be carpeting matching floor with dark brown cap.

- h. Ceilings - A suspended T-bar system shall be used. Acoustical tile sections 2' - 0" x 4' - 0" layed in a T-bar grid shall be suspended from the trusses using #12 gage wire. Wire spacing shall be a maximum of 48" O.C. Telephone and computer wiring will be accessed through the ceiling space.

- i. Insulation - The ceiling shall be insulated to an R30 factor, the exterior walls to R11 and the floor to R19 with fiber glass insulation material.

- j. Doors - The interior office door size shall be 3' 0" x 6' 8". Hinges shall be Heavy Duty brass butts inset into the door and jamb. A platform and stairway shall be provided at each entrance. Platform height shall be measured after trailers are on the site and level. Platform surface and stair treads, shall be constructed of Irving "Close Mesh" type CM-1 grating steel or aluminum. All work shall conform to OSHA Standards.

Platforms shall be made of treated wood or painted steel and shall be constructed to suit grade. Platform elevation to match floor elevation.

Exterior doors and frames shall be of heavy duty steel construction. Size shall be 3' 0" x 6' 8". One door shall be a 4' 0" x 6' 8". Each door shall be equipped with a heavy duty lock set and hydraulic closer. Window portion of the exterior door shall be lexan or plexiglass. Weather stripping shall be used to seal exterior doors.

Locations of doors and directions of swing are designated on the attached floor plan.

- k. Lighting - The office lighting shall provide a minimum of 75 foot-candles illumination at desk height. Halls shall have a minimum of 30 ft. candle illumination. Energy efficient recessed fluorescent fixtures with diffusers shall be used. A minimum of two fixtures are required per office. Each corridor shall have one fixture equipped with an emergency lighting kit such as Universal's Fluor-O-Pac or equal. (Sylvania Super II Tubes, Advance Mark III Ballasts or equal).

Incandescent lighting shall be used at the outside step areas only. Utility room and rest rooms shall have fluorescent lighting.

Switches shall be provided in all offices. Three-way switches shall be provided at the end of hall ways and rooms with two separate entry doors. (Such as Conference rooms).

- l. Air Conditioning and Heating - Each module shall have an independent 36WA3 Bard Unit or equivalent for heating and air conditioning. The Bard unit and duct system shall be properly sized to the needs of each module configuration.

Return air shall be drawn through the ceiling and a proper end plenum to prevent noise and drafts in the end offices where the Bard units are mounted.

Thermostat wiring shall run to the center of each unit and terminate in the ceiling.

- m. Electrical - Electrical service shall be 208/120 volt, 60 hz, 100 amp, three wire, single phase and ground to each module. Entrance shall be from underneath the complex through rigid conduit to a 100 amp UL listed breaker panel in each module. The electrical installation shall meet all applicable national, local & Hercules codes and regulations.

Grounded duplex receptacles shall be provided, one on each wall, at standard height in the offices. One additional dedicated outlet Hubbell IG-5251 shall be provided per office.

Also, one additional outlet on any wall over 12 ft. long. A 208 volt, single phase, outlet shall be provided in each utility room.

To facilitate telephone and computer wiring, an electrical box and a length of 1/2" EMT conduit shall be installed to serve each office. The empty box shall be placed at standard outlet height, empty and without cover. The conduit shall be stubbed with plastic bushing above the header in the ceiling plenum. Location of box will be designated on the floor plan. Back to back rooms can be served by a common 3/4" conduit and double deep box.

SPEC. NO. 9106

- n. Rest Rooms - Rest rooms will include complete installation of water lines, sewer lines, and vents to meet all applicable codes.

All water lines to be copper with the feeder hook up 1" ^{D/A}Ø. All sewer lines to be ~~cast iron~~.

Interconnections between modules will be completed by supplier at time of installation. Sewer manifold to be above floor line.

Restroom fixtures shall be American Standard as follows or equal:

Ledgewood wall hung lavatory 4300.042 with hangar and all fittings.

Trimbrook urinal 6560.015 with sloan royal #186 flush valve.

Instanto toilet 2512.010 with sloan royal 110 flush valve and church 5321.070 seat.

Metal modesty partitions shall be provided for urinals and commodes. Mirrors, towel tissue holders and feminine sanitary napkins and dispensers shall be included. Each rest room shall have one exhaust fan. Rest room doors to be equipped with self closer, push and kick plates and plates indicating "Men" or "Women".

- o. Corridor - A connecting corridor between the existing and new complex shall be weather tight.

- p. Miscellaneous - Roof mount exhaust fans shall be provided in conference and lunch rooms. Fans shall be squirrel cage or other type to assure quiet operation. The utility room shall contain a properly sized, water heater and utility sink.

Wall mounted water coolers shall be 5 gal. chestnut tweed pattern Oasis #DP5M where designated on plans furnished by Hercules. Hook up of water supply shall be completed by the contractor. Contractor to supply 3/4" ^{D/A}Ø C.I drain thru floor. Hook up by others.

Lighted exit signs shall be installed at each exit and in hallway with arrow. They shall have a proper battery backup system.

Production drawings shall be provided to Hercules for approval prior to construction. Two sets of as built drawings and manufacturers data on installed equipment shall be provided also at time of delivery or earlier.

SPEC. NO. 9106

Contractor shall be fully responsible for delivery of each module to the site designated by Hercules. Any site restrictions for modular placement shall be included with bid.

Contractor shall be responsible for complete installation of each complex, including locating each module, blocking and leveling and tying mating modules together.

Contractor shall be responsible for cleanup of the complex and the site prior to final inspection and acceptable of the complex.

The mobile office complex will be accepted after an inspection has shown that all requirements and specification have been met.

Hercules shall provide the site preparation earth work, electrical supply and tie-ins, sewer and water supply and hookups.

Trash bins will be on site for use during construction and cleanup.

Dialelectric couplings shall be provided as required for dissimilar pipe accessory materials.

Trailer fabrication schedule shall be provided to Hercules. All work subject to inspection by Hercules.



STANDARD SUBCONTRACT AGREEMENT FOR BUILDING CONSTRUCTION

This Document has important legal and insurance consequences, consultation with an attorney and insurance consultants and carriers is encouraged with respect to its completion or modification.

THIS AGREEMENT made at Murray, Utah

this 3 day of JULY, 19 85

and between MODULAIRE INDUSTRIES, Salt Lake City, Utah

hereinafter referred to as the Contractor, and SPACE BUILDING SYSTEMS INC.

hereinafter referred to as the Subcontractor, to perform part of the Work on the following Project:

PROJECT HERCULES 19 & 11 PLEX

OWNER. HERCULES

ARCHITECT None

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ARTICLE 1

Scope of Work

1.1 The Contractor employs the Subcontractor as an independent contractor, to perform the following part of the Work which the Contractor has contracted with the Owner to provide on the Project

All work and time frames are to be met to specifications; delays or failure to meet completion date may result in liquidated damages of \$100.00 per day.

COMPLETE ELECTRICAL ROUGH & FINISH INTERIOR ONLY AS PER QUOTE.

The Subcontractor agrees to perform such part of the Work (hereinafter called "Subcontractor's Work") under the general direction of the Contractor and subject to the final approval of the Architect/Engineer or other specified representative of the Owner, in accordance with the Contract Documents. Subcontractor will furnish all of the labor and materials, along with competent supervision, shop drawings and samples, tools, equipment, scaffolding, and permits which are necessary for such performance.

1.2 The Contract Documents are
Sub-Contract Agreement

The Subcontractor binds himself to the Contractor for the performance of Subcontractor's Work in the same manner as the Contractor is bound to the Owner for such performance under Contractor's contract with the Owner. The pertinent parts of such contract will be made available upon Subcontractor's request.

1.3 Should any question arise with respect to the interpretation of the drawings and specifications, such questions shall be submitted to the Architect/Engineer and his decision shall be final and binding. If there is no Architect/Engineer for this Project, the Contractor's decision shall be followed by the Subcontractor.

ARTICLE 2

Payments

1.1 The Contractor agrees to pay to the Subcontractor for the satisfactory completion of Subcontractor's Work the sum of Eighty Nine Thousand Five Hundred Seventy and 00/100----- \$ 89,570.00) in monthly payments of 100% percent of the work performed in any preceding month, in accordance with estimates prepared by the Subcontractor and approved by the Contractor and HERCULES. Payments made on account of materials not incorporated in the work, but delivered and suitably stored at the site or at some other location agreed upon in writing, shall be in accordance with the terms and conditions of the Contract Documents. Subcontractor will provide monthly completed lien waivers and supplier affidavit forms, in a form satisfactory to the Owner and Contractor. Payment of the approved portion of the Subcontractor's monthly estimate shall be conditioned upon receipt by the Contractor of his payment from the Owner. Approval and payment of Subcontractor's monthly estimate is specifically agreed not to constitute or imply acceptance by the Contractor or Owner of any portion of the Subcontractor's Work.

1.2 In the event the Subcontractor does not submit to the Contractor such monthly estimates by the 10th of the month, then the Contractor may at his option include in his monthly estimate to the Owner for Work performed during the preceding month such amount as he may deem proper for the Work of the Subcontractor for the preceding month and the Subcontractor agrees to accept such approved portion thereof in lieu of monthly payment based upon the Subcontractor's estimate.

2.3 In the event it appears to the Contractor that the labor, material and other bills incurred in the performance of Subcontractor's Work are not being currently paid, the Contractor may take such steps as he deems necessary to insure that the money paid with any progress payment will be utilized to pay such bills.

2.4 Final payment shall be paid to the Subcontractor upon approval by the Owner, Architect and the Contractor of the Subcontractor's Work and, upon payment having been received by the Contractor for all of Subcontractor's Work and satisfactory evidence having been received by the Contractor that all labor, including customary fringe benefits and payments due under collective bargaining agreements, and all subcontractors and materialmen have been paid to date and are waiving their lien rights upon the final payment of a specific balance due.

2.5 The Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owing by the Subcontractor to the Contractor; and in the event of any breach by the Subcontractor of any provision or obligation of this Subcontract, or in the event of the assertion by other parties of any claim or lien against the Owner, the Contractor, Contractor's Surety, or the premises upon which the Work was performed, which claim or lien arises out of the Subcontractor's performance of this Agreement, the Contractor shall have the right, but is not required, to retain out of any payments due or to become due to the Subcontractor an amount sufficient to completely protect the Contractor from any and all loss, damage or expense therefrom, until the claim or lien has been adjusted by the Subcontractor to the satisfaction of the Contractor. This paragraph shall be applicable even though the Subcontractor has posted a full payment and performance bond.

ARTICLE 3

Prosecution of the Work

3.1 Time is of the essence for both parties, and they mutually agree to see to the performance of their Work and the Work of their subcontractors so that the entire project may be completed in accordance with the Contract Documents. The Subcontractor shall provide the Contractor with scheduling information and Subcontractor's proposed schedule for the Subcontractor's Work. The Contractor shall then prepare the Schedule of the Work and, as may be necessary, revise such schedule as the Work progresses. Subcontractor acknowledges that revisions may be made in such schedule and agrees to make no claim for acceleration or delay by reason of such revisions so long as such revisions are of the type normally experienced in Work of this scope and complexity.

3.2 The Subcontractor shall prosecute Subcontractor's Work in a prompt and diligent manner in accordance with the Schedule of Work without hindering the Work of the Contractor or any other subcontractor. If work of others is damaged by Subcontractor, the Subcontractor will cause such damage to be corrected to the satisfaction of and without cost to the Contractor and Owner. In the event Subcontractor fails to maintain his part of the Schedule of the Work, he shall, without additional compensation, work such overtime as the Contractor may direct until Subcontractor's Work is in accordance with such schedule.

3.3 The Subcontractor shall be responsible for and will prepare for performance of Subcontractor's Work, including without limitation thereto, the submission of shop drawings, samples, tests, field dimensions, determination of labor requirements and ordering of materials as required to meet the Schedule of Work. Subcontractor shall notify Contractor when portions of his Work are ready for inspection.

3.4 The Subcontractor will furnish periodic progress reports of the Subcontractor's Work as mutually agreed including the progress of materials or equipment to be provided under this Agreement that may be in the course of preparation or manufacture.

3.5 The Subcontractor shall cooperate with the Contractor and subcontractors whose work may interfere with the Subcontractor's Work and participate in the preparation of coordinated drawings and work schedules in areas of congestion, specifically noting and advising the Contractor of any interference by other contractors or subcontractors.

3.6 The Subcontractor shall keep the building and premises reasonably clean of debris resulting from the performance of Subcontractor's Work. If the Subcontractor fails to comply with this paragraph within 48 hours after receipt of notice of non-compliance from the Contractor, the Contractor may perform such necessary clean-up and deduct the cost from any amounts due to the Subcontractor.

3.7 The Subcontractor shall give adequate notices pertaining to the Work of the Subcontractor to proper authorities and secure and pay for all necessary licenses and permits to carry on Subcontractor's Work, the furnishing of which is required by the Contract Documents.

3.8 The Subcontractor shall comply with all Federal, State and local laws, Social Security Laws and Unemployment Compensation Laws, Workers' Compensation Laws and Safety Laws insofar as applicable to the performance of this Agreement. He shall pay all taxes applicable to the performance of Subcontractor's Work. He shall also maintain his own safety program for compliance with such laws.

3.9 The Subcontractor will not assign this subcontract nor subcontract the whole or any part of the Work to be performed hereunder without the prior written consent of the Contractor, with the exception of those subcontractors listed by the Subcontractor and furnished to the Contractor at the time this Agreement is executed.

ARTICLE 4

Changes in the Work

4.1 The Contractor and Subcontractor agree that the Contractor may add to or deduct from the amount of Work covered by this Agreement, and any changes so made in the amount of Work involved, or any other parts of this Agreement, shall be by a written amendment hereto setting forth in detail the changes involved and the value thereof which shall be mutually agreed upon between the Contractor and Subcontractor. The Subcontractor agrees to proceed with the Work as changed when so ordered in writing by the Contractor so as not to delay the progress of the Work, and pending any determination of the value thereof unless Contractor first requests a proposal of cost before the change is effected. If the Contractor requests a proposal of cost for a change, the Subcontractor shall promptly comply with such request.

4.2 Subcontractor shall be entitled to receive no extra compensation for extra Work or materials or changes of any kind regardless of whether the same was ordered by the Contractor or any of his representatives unless a Change Order therefor has been issued in writing by the Contractor. If extra work was ordered by the Contractor and the Subcontractor performed same but did not receive a written order therefor, the Subcontractor shall be deemed to have waived any claim for extra compensation therefor, regardless of any written or verbal protests or claims by the Subcontractor. The Subcontractor shall be responsible for any costs incurred by the Contractor for changes of any kind made by the Subcontractor that increase the cost of the work for either the Contractor or other subcontractors when the Subcontractor proceeds with such changes without a written order therefor.

4.3 The Subcontractor agrees that no claim for additional services rendered or materials furnished by the Subcontractor to the Contractor shall be valid unless notice is given to the Contractor prior to the furnishing of the services or material or unless written notice of the claim therefor is given by the Subcontractor to the Contractor not later than the last day of the calendar month following that in which the claim originated, with the amount of the claim to be given in writing by the Subcontractor as soon as practicable.

4.4 The Subcontractor will make all claims for extra compensation and for extension of time to the Contractor promptly in accordance with this Article and consistent with the Contract Documents.

4.5 Notwithstanding any other provision, if the Work for which the Subcontractor claims extra compensation is determined by the Owner or Architect not to entitle the Contractor to a Change Order or extra compensation, then the Contractor shall not be liable to the Subcontractor for any extra compensation for such Work, unless Contractor agreed in writing to such extra compensation.

ARTICLE 5

Insurance and Indemnity

5.1 Prior to starting Work the Subcontractor shall procure and maintain in force, Workers' Compensation Insurance, Employers Liability Insurance, Comprehensive General Liability Insurance with contractual coverage and Automobile Liability Insurance and such other insurance, to the extent required by the Contract Documents for the Subcontractor's Work.

5.2 The Subcontractor's Comprehensive General and Automobile Liability Insurance, as required by Paragraph 5.1 shall be written for not less than limits of liability as follows:

3. Comprehensive General Liability

1 Bodily Injury \$ 100,000.00 Each Occurrence
(Completed Operations)

\$ 500,000.00 Aggregate

2 Property Damage \$ 100,000.00 Each Occurrence

\$ 500,000.00 Aggregate

b Comprehensive Automobile Liability

1 Bodily Injury \$ 100,000.00 Each Person

\$ 500,000.00 Each Occurrence

2. Property Damage \$ 100,000.00 Each Occurrence

5.3 Comprehensive General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy

5.4 The foregoing policies shall contain a provision that coverages afforded under the policies will not be cancelled or not renewed until at least thirty (30) days' prior written notice has been given to the Contractor. Certificates of Insurance acceptable to the Contractor shall be filed with the Contractor prior to the commencement of Work

5.5 The Contractor and Subcontractor waive all rights against each other and against the Owner, the Architect/Engineer, separate contractors, and all other subcontractors for damages caused by fire or other perils to the extent covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance

5.6 To the fullest extent permitted by law, the Subcontractor agrees to indemnify and hold harmless the Contractor, the Owner, the Architect/Engineer and all of their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance, or failure in performance, of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Subcontractor or anyone directly or indirectly employed by him or anyone for whose acts he may be liable regardless of whether it is caused in part by a party indemnified hereunder. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 5.6

5.6.1 In any and all claims against the Contractor or any of his agents or employees by any employee of the Subcontractor, anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this Paragraph 5.6 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

5.6.2 The obligations of the Subcontractor under this Paragraph 5.6 shall not extend to the liability of the Architect/Engineer, his agents or employees, arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or failure to give directions or instructions by the Architect/Engineer, his agents or employees, providing such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 6

Performance Bond and Labor and Material Payment Bond

A Performance Bond and a Labor and Material Payment Bond in a form satisfactory to the Contractor shall be furnished in the full amount of this Agreement, if required by the Contractor. This obligation shall continue throughout the agreement and may be required at any time during the performance of Subcontractor's Work by a change under Article 6.

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ARTICLE 7

Warranty

The Subcontractor agrees to promptly make good without cost to the Owner or Contractor any and all defects due to faulty workmanship and/or materials which may appear within the guarantee or warranty period so established in the Contract Documents; and if no such period be stipulated in the Contract Documents, then such guarantee shall be for a period of one year from date of completion and acceptance of the project by the Owner. The Subcontractor further agrees to execute all special guarantees as provided by the terms of the Contract Documents, prior to final payment.

ARTICLE 8

Contractors' Obligations

8.1 The Contractor agrees to be bound to the Subcontractor by all the obligations that the Owner assumes to the Contractor under the Contract Documents and by all provisions thereof affording remedies and redress to the Contractor from the Owner insofar as applicable to this Agreement.

8.2 Upon request, the Contractor will give the Subcontractor written authorization to obtain direct from the Architect/Engineer or Owner's authorized agent, evidence of amount and percentages of completion certified on his account.

8.3 The Contractor shall not issue or give any instruction, order or directions directly to employees or workmen of the Subcontractor other than to the persons designated as the authorized representative(s) of the Subcontractor.

8.4 The Contractor shall make no demand for liquidated damages in any sum in excess of the amount specifically named in this Agreement or the Contract Documents. Liquidated damages shall not be assessed for delays not caused by the Subcontractor. Liquidated damages, when assessed, shall not exceed the Subcontractor's proportionate share of the responsibility for such delay. This provision does not preclude any claim the Contractor may have for direct damages under law.

8.5 The Subcontractor will furnish those temporary facilities and services required by the Subcontractor except for those to be provided by the Contractor set forth in the Attachment A to this Agreement. Adequate storage areas, if available, will be allocated by the Contractor for the Subcontractor's materials and equipment during the course of the Work.

8.6 The Contractor agrees that no claim for services rendered or materials furnished by the Contractor to the Subcontractor shall be valid unless notice is given to the Subcontractor prior to furnishing of the services or material or unless written notice of the claim therefor is given by the Contractor to the Subcontractor not later than the last day of the calendar month following that in which the claim originated, with the amount of the claim to be given in writing by the Contractor as soon as practicable.

ARTICLE 9

Termination

9.1 Should the Subcontractor fail at any time to supply a sufficient number of properly skilled workmen or sufficient materials and equipment of the proper quality, or fail in any respect to prosecute the Work with promptness and diligence, or fail to promptly correct defective Work or fail in the performance of any of the agreements herein contained, the Contractor may, at his option, provide such labor, materials and equipment and to deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to the Subcontractor under this Agreement.

9.2 If the Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or materials or equipment of the proper quality and quantity, or fail in any respect to prosecute Subcontractor's Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the work of the Contractor or other subcontractors, or fail in the performance of any of the covenants herein contained, or be unable to meet his debts as they mature, the Contractor may at his option at any time after serving written notice of such default with direction to cure in a specific period, but not less than two (2) working days, and the Subcontractor's failure to cure the default, terminate the Subcontractor's employment by delivering written notice of termination to the Subcontractor. Thereafter, the Contractor may take possession of the plant and work, materials, tools, appliances and equipment of the Subcontractor at the building site, and through itself or others provide labor, equipment and materials to prosecute Subcontractor's Work on such terms and conditions as

shall be deemed necessary, and shall deduct the cost thereof, including without restriction thereto all charges, expenses, losses, costs, damages, and attorney's fees, incurred as a result of the Subcontractor's failure to perform, from any money then due or thereafter to become due to the Subcontractor under this Agreement

9.3 If the Contractor so terminates the employment of the Subcontractor, the Subcontractor shall not be entitled to any further payments under this agreement until Subcontractor's Work has been completed and accepted by the Owner, and payment has been received by the Contractor from the Owner with respect thereto. In the event that the unpaid balance due exceeds the Contractor's cost of completion, the difference shall be paid to the Subcontractor, but if such expense exceeds the balance due, the Subcontractor agrees promptly to pay the difference to the Contractor

ARTICLE 10

Claims

10.1 All claims, disputes and other matters in question arising out of, or relating to, this Subcontract or the breach thereof shall be decided by Arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon in accordance with applicable law in any court having jurisdiction thereof

10.2 In the event the Contractor and Owner or others arbitrate matters relating to this Subcontract, it shall be the responsibility of the Subcontractor to prepare and present the Contractor's case, to the extent the proceedings are related to this Subcontract.

10.3 Should the Contractor enter into arbitration with the Owner or others regarding matters relating to this Agreement, the Subcontractor shall be bound by the result of the arbitration to the same degree as the Contractor

10.4 The Subcontractor shall carry on Subcontractor's Work and maintain his progress during any arbitration proceedings

ARTICLE 11

Prevailing Law

This Agreement shall be governed by the law in effect in the State of Utah

IN WITNESS WHEREOF the parties hereto have executed this Agreement under seal, the day and year first above written

ATTEST

[Signature]
Subcontractor

By [Signature] Owner
(Title)

MODULAIRE INDUSTRIES
Contractor

ATTEST

[Signature]
Branch Manager (Title)

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SALT LAKE COUNTY, UTAH

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Karen C. Jensen (1680)
 Steven T. Waterman (4164)
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 310 South Main, Suite 1200
 Salt Lake City, Utah 84101
 Telephone: (801) 363-3300

Linda Simpson
 CLERK

Attorneys for Defendant, Modulaire Industries, Inc.

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY

STATE OF UTAH

JOHN WAGNER ASSOCIATES,
 dba GRABBER UTAH,

Plaintiff,

vs.

HERCULES, INC., MODULAIRE
 INDUSTRIES, INC., and JOHN DOES
 I - X,

Defendants.

Civil No. C86-404
 (Judge Banks)

**AFFIDAVIT OF
 RYDER CHRISTIAN WARING**

STATE OF UTAH)
) :SS.
 COUNTY OF SALT LAKE)

Ryder Christian Waring, being first duly sworn, deposes and states:

1. I have personal knowledge of the following facts and could and would testify regarding such facts if called as a witness in the above-entitled action.

2. I am currently employed by Hercules, Inc., and have worked for Hercules for approximatey 15½ years. Since approximately October, 1979, I have worked in the purchasing department of Hercules. My current position is purchasing agent, and my specific job title is "Buyer III," which was formerly known as a subcontract

WATKISS & CAMPBELL
 ATTORNEYS AT LAW
 TWELFTH FLOOR, 310 SOUTH MAIN STREET
 SALT LAKE CITY, UTAH 84101-2171

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administrator. I have held my current position since approximately November, 1985. My prior job title was "Senior Buyer," which is now known as "Buyer II." I held my prior position continuously from approximately November, 1979, until November, 1985.

3. In both my current position and my prior position, my duties and responsibilities have involved leases and rentals of personal and real property. My work includes sending out requests for bids, analyzing the bid responses, and selecting the particular entity to whom a particular contract is to be awarded. After a particular contract is awarded, I am responsible for preparing the purchase order in connection with that contract.

4. As Senior Buyer, I had direct involvement with the contract that was awarded to Modulaire Industries for the lease of 30 modular office units (hereinafter "trailers"). In connection with that contract, I sent out the requests for bids, analyzed the bid responses, and awarded the contract to Modulaire. I also prepared the Purchase Order that reflected the terms and conditions of the agreement between Hercules and Modulaire. A true and correct copy of that Purchase Order, which was signed on October 2, 1985, is attached hereto as Exhibit 1.

5. In preparing the Purchase Order, it was my intent to lease the trailers for and in behalf of Hercules for two years. My intent was not to make the trailers a permanent part of the real property.

6. The property on which Modulaire installed the trailers is owned by the United States Navy (hereinafter "the Navy") and is managed by Hercules pursuant to an agreement (hereinafter the "Award/Contract"), a true and correct copy of which is attached hereto as Exhibit 2.

7. Pursuant to the terms of the Award/Contract, Modulaire obtained the consent of the Navy to place trailers on the Navy's property for a period not to exceed 24 months.

8. In my capacity as Senior Buyer, I personally visited the site on which the trailers were located both during and after the installation of the trailers. During those visits, I observed and inspected the trailers to ensure that they were in compliance with the contract specifications.

9. The trailers that Modulaire¹⁹ leased to Hercules are 14' x 60' and weigh approximately 20,000 to 22,000 pounds each. The trailers are bolted together. Nineteen of the units comprise Hercules Annex 15; eleven of the units comprise Hercules Annex 16. The trailers are not attached to the real property, but rather, they rest on temporary piers consisting of cinder blocks stacked on wooden pads. The piers rest on compacted gravel fill which stabilizes the trailers. The trailers were moved onto the site on wheels. After the trailers were stabilized on the cinder block piers, the wheels were removed and stored for future use in moving or removing the trailers. Prior to delivery, the trailers were finished, with the exception of the demountable partitioning and other interior finishing, which were installed once the trailers had been positioned and bolted together. The trailers are licensed as highway vehicles and are taxed as personal property by the State of Utah.

10. Annex 9, another complex of trailers built by Modulaire which is currently being prepared for removal, is located within close proximity to Annex 15 and Annex 16.

11. Annex 10, a complex of trailers built by Continental Mobile Structures, was previously located within close proximity to Annex 9, Annex 15, and Annex 16. Authorization from the Navy for the placement of Annex 10 on the property has expired. Accordingly, the complex of trailers known as Annex 10 has been removed from the property.

12. The trailers of Annex 9 and Annex 10 were very similar, if not identical, to the trailers of Annex 15 and Annex 16 and were bolted together and stabilized on piers in the same fashion.

13. On the 16th day of April, 1987, I visited the real property described in the complaint in the above-captioned action, which is located at 4100 South 8400 West, and upon which is situated the temporary office complexes known as Hercules Annex 15, Annex 16, Annex 9, and the former site of Annex 10. At that time I witnessed Boyd Gourley photographing various portions of the property. Such photographs are identified as follows:

A. Stabilization Pier Photographs

<u>Negative Number</u>	<u>Description</u>
87-C-3919	A wood footing for cinder block stabilization pier for former Annex 10.
87-C-3926	A stabilization pier on Annex 9 (typical).
87-C-3928	The underside of Annex 9, showing a series of stabilization piers (typical).
87-C-3935	The underside of Annex 15, showing a series of stabilization piers (entry via a removed skirting shown by No. 87-C-3928).
87-C-3936	A stabilization pier of Annex 15 as seen through removed section of skirting.
87-C-3938	A stabilization pier of Annex 15 (through a removed section of skirting) (close up in No. 87-C-3936) that supports the I-beam that forms the end of the unit.

B. Unit Connection Photographs

87-C-3920	Disconnected water connection to former Annex 10; note the ABS pipe which is easy to disconnect (typical).
87-C-3921	Computer terminal and Wang terminal cable connections to former Annex 10 (typical).
87-C-3922	Layout of cable connections for former Annex 10 (typical).

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- 87-C-3924 Leftover skirting from former Annex 10 units with leftover removed ABS pipe for temporary plumbing.
- 87-C-3925 The former location of temporary steps to reach former Annex 10.
- 87-C-3927 The location of former electrical boxes on the end of Annex 7.
- 87-C-3929 Former electrical equipment connections to Annex 9.
- 87-C-3930 A bolt that temporarily holds together two of the eleven Annex 16 trailers.
- 87-C-3940 The temporary steps to reach Annex 15.
- 87-C-3941 The temporary steps to reach Annex 15.
- 87-C-3943 Electrical boxes on the end of Annex 15.

C. Site Layout Photographs

- 87-C-3922 Site of former Annex 10 (trailers forming a unit of three levels) showing compacted and leveled sand and gravel base (view from north).
- 87-C-3923 Site of former Annex 10 (trailers forming a unit of three levels) showing compacted and leveled sand and gravel base (view from north).
- 87-C-3932 Nineteen trailers in 'L' configuration known as Annex 15 (view from southeast).
- 87-C-3933 Eleven trailers on three levels known as Annex 16 (view from east).
- 87-C-3934 The bridge connecting the 'L' configuration of Annex 15 (view from east).
- 87-3-3939 The backside of 13 modular office units that form the long portion of the 'L' configuration of Annex 15 (view from northeast).

D. Personal Property Tax Sticker Photographs

- 87-C-3929 Personal property tax sticker affixed to one unit of Annex 9.
- 87-C-3931 Personal property tax stickers affixed to three separate units of Annex 16 (east side).

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- 87-C-3933 Personal property tax stickers on each of the 11 trailers comprising Annex 16 (east side).
- 87-C-3937 Close up of the personal property tax sticker on one unit of Annex 15.
- 87-C-3938 Expanded view of personal property tax sticker on unit of Annex 15 shown in No. 87-C-3937.

E. Mobile Home Construction Photographs

- 87-C-3926 A portion of the 60' I-beam that supports the length of the trailer unit and rests on a stabilization pier (view of Annex 9 - typical).
- 87-C-3929 The door for entry into Annex 9 (approximately four feet off the ground and above the removable skirting).
- 87-C-3931 East side of Annex 16, depicting skirting below the floor level of the trailer unit.
- 87-C-3938 The I-beam on end of a unit in Annex 15 (exposed through a section of removed skirting).
- 87-C-3939 Stairs for entry into the trailers and individual heating and air conditioning units for each of the 13 trailers forming a portion of Annex 15 (north side).

14. The photographs listed above show the temporary and personal property nature of the trailers.

15. The Stabilization Pier Photographs referred to above show that the trailers are not permanently attached to the property that is owned by the Navy.

16. The Connector Photographs referred to above show the ease with which the trailers may be disassembled and removed.

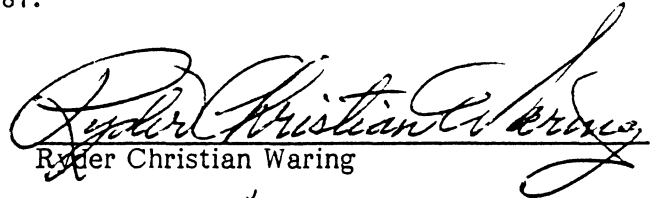
17. The Site Layout Photographs referred to above show that Annex 10 was removed and that both Annexes 15 and 16 have similar configurations.

18. The Personal Property Tax Sticker Photographs referred to above show the personal property nature of the trailers.

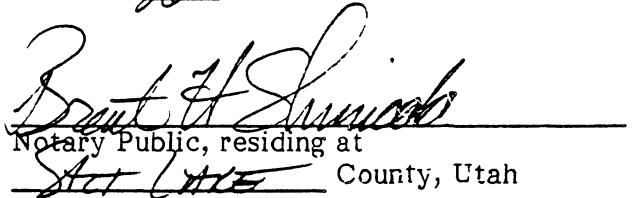
19. The Mobile Home Construction Photographs referred to above show that the trailers have not become a permanent part of the Navy's property.

000238

DATED this 26th day of June, 1987.


Ryder Christian Waring

SUBSCRIBED AND SWORN to before me this 26th day of June, 1987.


Notary Public, residing at
SALT LAKE County, Utah

My commission expires:

2-24-91

WATKISS & CAMPBELL
ATTORNEYS AT LAW
TWELFTH FLOOR, 310 SOUTH MAIN STREET
SALT LAKE CITY, UTAH 84101-2171



HER 13276-10 (7-83)

PURCHASE ORDER

COPY

HERCULES AEROSPACE - BACCHUS WORKS
MAGNA, UT 84404
(801) 250-5811

PAGE: 1

REQUIRED DATE	VIA	BUS. CODE	F.O.B.	PURCHASE ORDER NO.	SUPP.
08/15/85	VENDOR'S TRUCK	C0	SP FPPD, CHGBAC	BACC07061	
BUYER	CC	IND CL	TYPE CONTR	TERMS	DATE
R. C. WARING	C	SO	FP	NET CASH	06/07/85

Ship to:

HERCULES INC
BACCHUS WORKS

BACCHUS UT 84044

INSTRUCTIONS
TO VENDOR

1. MAIL ACKNOWLEDGEMENT AND THREE COPIES OF YOUR INVOICE TO ADDRESS ABOVE
 2. SHOW PURCHASE ORDER NO. ON EACH PACKAGE, PACKING SLIP, BILL OF INVOICE, AND ALL OTHER CORRESPONDENCE
 3. LEGIBLE PACKING SLIP MUST ACCOMPANY ALL SHIPMENTS AND REFER TO NO. AND LINE ITEM NO.
 4. COPY OF PACKING SLIP, BILL OF LADING, OR EXPRESS RECEIPT MUST ACCOMPANY INVOICE.
 5. TRANSPORTATION CHARGES APPEARING ON ALL INVOICE MUST BE SUPPORTED BY RECEIPTED FREIGHT BILL OR RECEIPTED EXPRESS BILL.
- DO NOT ADD UTAH SALES/TAX ON YOUR INVOICE. HERCULES INCORPORATED SELF-ADDRESSES AND PAY UTAH SALES/TAX DIRECT TO THE STATE OF UTAH APPROPRIATE PER TAX EXEMPTION CERTIFICATE NUMBER 18072.

Vendor

0603301077
MODULAIRE INDUSTRIES
744 MONTGOMERY ST
SAN FRANCISCO CA 94111

ITEM	DESCRIPTION	QUANTITY	PRICE	UNIT	AMT
	DO NOT DUPLICATE. THIS ORDER CONFIRMS VERBAL CONTRACT THIS PURCHASE ORDER IS ISSUED TO LEASE THE FOLLOWING TWO COMPLEXES: A 19-UNIT COMPLEX (TO BE KNOWN AS ANNEX 15), FROM SEPTEMBER 8, 1985 THRU SEPTEMBER 5, 1987, AND AN 11-UNIT COMPLEX (TO BE KNOWN AS ANNEX 16), FROM SEPTEMBER 20, 1985 THRU SEPTEMBER 19, 1987 - WITH AN OPTION TO EXTEND THE LEASES.				
1	LEASE 30 UNITS, 14' X 60' EACH, MODULAR OFFICE UNITS, TO COMPRISE ANNEXES 15 & 16, FOR TWENTY-FOUR MONTH PERIODS, WITH AN OPTION TO EXTEND THE LEASES. PROPERTY NUMBERS L-636 & L-637 ARE ASSIGNED TO THESE COMPLEXES. THESE COMPLEXES WILL BE BUILT TO HERCULES SPECIFICATION NO. 9106.	XXX	XXXXXXX		
2	SERVICE DELIVERY, INSTALLATION AND SETUP, INCLUDING SKIRTING AND HEAVY DUTY STAIRS AT EACH ENTRANCE. LEASE COSTS AND ONE-TIME CHARGES: MONTHLY LEASE COST: 19-UNIT COMPLEX \$9,873.00/MONTH X 24 MONTHS = \$236,952.00 PLUS ONE-TIME CHARGES TO BE BILLED SEPARATELY DELIVERY, SET-UP AND SKIRTING = 18,235.00 TOTAL LEASE AND ONE-TIME CHARGES = \$255,187.00 MONTHLY LEASE COST: 11-UNIT COMPLEX \$6,317.00/MONTH X 24 MONTHS = \$151,608.00 PLUS ONE-TIME CHARGES TO BE BILLED SEPARATELY DELIVERY, SET-UP AND SKIRTING 12,471.00 TOTAL LEASE AND ONE-TIME CHARGES = \$164,079.00 GRAND TOTAL BOTH COMPLEXES = \$419,266.00 NOTE: IF AND WHEN NEEDED, THE FOLLOWING COSTS WILL	XXX	XXXXXXX		

000240

ORIGINAL COPY

WILLIAM M. PIERCE, PURCHASING MANAGER

BY



COPY

HERCULES AEROSPACE - BACCHUS WORKS
MAGNA, UT 84404
(801) 250-5911

PAGE: 2 of

REQUIRED DATE	VIA			BUS. CODE	F.O.B.	PURCHASE ORDER NO.		SUPL	REL
	VENDOR'S TRUCK			C0	SP FPPD.CHGBAC	BACC07061			
08/15/85	BUYER	CC	IND CL	TYPE CONTR	TERMS		DATE		
	R. C. WARING	C	SO	FP	NET CASH		06/07/85		

BACCHUS

UT 84044

0603301077
MODULAIRE INDUSTRIES
744 MONTGOMERY ST
SAN FRANCISCO CA 94111

INSTRUCTIONS TO VENDOR

- 1 MAIL ACKNOWLEDGEMENT AND THREE COPIES OF YOUR INVOICE TO ADDRESS ABOVE
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 - 3 LEGIBLE PACKING SLIP MUST ACCOMPANY ALL SHIPMENTS AND REFERENCE P.C. NO. AND LINE ITEM NO.
 - 4 COPY OF PACKING SLIP, BILL OF LADING, OR EXPRESS RECEIPT MUST ACCOMPANY INVOICE.
 - 5 TRANSPORTATION CHARGES APPEARING ON ALL INVOICE MUST BE SUPPORTED BY RECEIPTED FREIGHT BILL OR RECEIPTED EXPRESS BILL
- DO NOT ADD UTAH SALES/TAX ON YOUR INVOICE. MERCEDES INCORPORATED WILL SELF-ADDRESS AND PAY UTAH SALES/TAX DIRECT TO THE STATE OF UTAH WHEN APPROPRIATE PER TAX EXEMPTION CERTIFICATE NUMBER 89072.

DESCRIPTION	QUANTITY	PRICE	UNIT	AMOUNT
BE APPLICABLE: 19-UNIT 11-UNIT				
DISMANTLE.....		\$9,500.00..\$4,180.00		
RETURN DELIVERY..		\$5,500.00..\$2,420.00		
<p>•</p> <p>• ** THIS PURCHASE ORDER NOT TO EXCEED \$419,266.00 **</p> <p>•</p> <p>• DELIVERY REQUIREMENTS: DELIVER TO HERCULES BACCHUS WORKS AND LOCATE NW OF BUILDING 16 AT 4100 SOUTH AND 8400 WEST. INSTALLATION TO BE COMPLETE AS SOON AS POSSIBLE. HERCULES WILL BE RESPONSIBLE FOR SITE PREPARATION, SEWER, WATER AND ELECTRICAL SERVICE HOOKUPS.</p> <p>•</p> <p>SAFETY REQUIREMENTS</p> <p>1. THIS IS NOT EXPLOSIVE OR HAZARDOUS.</p> <p>2. UOSHA RULES AND REGULATIONS APPLY.</p> <p>NONCONFORMING ITEMS AS OFFERED BY THE SUPPLIER MAY BE REJECTED OR ACCEPTED AT THE SOLE OPTION OF THE BUYER. ANY SUCH ACCEPTANCE WILL RESULT IN NEGOTIATIONS FOR AN EQUITABLE ADJUSTMENT IN PRICE.</p> <p>PRICE WARRANTY - SUPPLIER CERTIFIES THAT THE PRICES REFLECTED HEREIN DO NOT EXCEED THE CURRENT SELLING PRICE OR PRICES FOR THE SAME OR SUBSTANTIALLY THE SAME ARTICLES OR SERVICES THAT ARE SOLD TO THE GOVERNMENT OR TO ANY OTHER PURCHASER, TAKING INTO ACCOUNT THE QUANTITY AND QUALITY UNDER CONSIDERATION.</p> <p>INDEMNIFICATION - THE SUPPLIER AGREES THAT WHEN ITS EMPLOYEES, AGENTS, CONTRACTORS AND/OR LOWER-TIER SUBCONTRACTORS ENTER PREMISES OCCUPIED BY OR UNDER THE THE CONTROL OF HERCULES IN THE PERFORMANCE OF THIS ORDER, SUPPLIER AGREES THAT IT WILL INDEMNIFY AND HOLD HARMLESS HERCULES, ITS OFFICERS AND EMPLOYEES</p>				

000241

WILLIAM M. PIERCE, PURCHASING MANAGER

BY

ORIGINAL COPY



HER 13326-10 (9-83)

PURCHASE ORDER

COP,

HERCULES AEROSPACE - BACCHUS WORKS
MAGNA, UT 84404
(801) 250-5811

PAGE: 30

REQUIRED DATE	VIA	BUS CODE		F.O.B.	PURCHASE ORDER NO.	
08/15/85	VENDOR'S TRUCK	C0		SP FPPD.CHGBAC	BACC07061	
BUYER		C/C	WHD CL	TYPE CONTR	TERMS	DATE
R. C. WARING		C	SO	FP	NET CASH	06/07/85

Ship to:

HERCULES INC
BACCHUS WORKS

BACCHUS UT 84044

Vendor

0603301077
MODULAIRE INDUSTRIES
744 MONTGOMERY ST
SAN FRANCISCO CA 94111INSTRUCTIONS
TO VENDOR

1. MAIL ACKNOWLEDGEMENT AND THREE COPIES OF YOUR INVOICE TO AC ABOVE
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 5. TRANSPORTATION CHARGES APPEARING ON ALL INVOICE MUST BE SUPP BY RECEIPTED FREIGHT BILL OR RECEIPTED EXPRESS BILL
- DO NOT ADD UTAH SALESUSE TAX ON YOUR INVOICE. HERCULES INCORPORATE SELF-ADDRESS AND PAY UTAH SALESUSE TAX DIRECT TO THE STATE OF UTAH APPROPRIATE PER TAX EXEMPTION CERTIFICATE NUMBER 09072.

ITEM	DESCRIPTION	QUANTITY	PRICE	UNIT	AMC
	<p>FROM ANY LOSS, COST, DAMAGE, EXPENSE, OR LIABILITY BY REASON OF PROPERTY DAMAGE OR PERSONAL INJURY OF WHATSOEVER NATURE OR KIND ARISING OUT OF, AS A RESULT OF, OR IN CONNECTION WITH, SUCH PERFORMANCE OCCASIONED IN WHOLE OR IN PART BY THE ACTIONS OR OMISSIONS OF THE SUPPLIER, ITS EMPLOYEES, AGENTS, SUBCONTRACTORS, AND/OR LOWER-TIER SUBCONTRACTORS. THE SUPPLIER ALSO AGREES THAT IT WILL MAINTAIN PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE IN REASONABLE LIMITS COVERING THE OBLIGATIONS SET FORTH ABOVE AND WILL MAINTAIN PROPER WORKMEN'S COMPENSATION INSURANCE COVERING ALL EMPLOYEES RENDERING PERFORMANCE UNDER THIS ORDER.</p> <p>• ANNEX 15:</p> <p>LEASE EXTENSION OPTION: IF HERCULES DEEMS IT NECESSARY TO EXTEND THE LEASE OF THE SUBJECT 19-UNIT COMPLEX BEYOND THE INITIAL TWO YEAR PERIOD, THE EXTENDED LEASE RATE WILL BE NEGOTIATED, BUT WILL IN NO CASE BE HIGHER THAN THE PRESENT MONTHLY RATE OF \$9,873.00 .</p> <p>• ANNEX 16:</p> <p>LEASE EXTENSION OPTION: IF HERCULES DEEMS IT NECESSARY TO EXTEND THE LEASE OF THE SUBJECT 11-UNIT COMPLEX BEYOND THE INITIAL TWO YEAR PERIOD, THE EXTENDED LEASE RATE WILL BE NEGOTIATED, BUT WILL IN NO CASE BE HIGHER THAN THE PRESENT MONTHLY RATE OF \$6,317.00 .</p> <p>• ANNEX 15:</p> <p>RECAPTURE PROVISIONS: IT IS NOTED THAT THE SUBJECT MOBILE OFFICE COMPLEX HAS A PURCHASE PRICE OF \$533,377.00 (PLUS TAX) AT THE TIME THIS LEASE COMMENCES. THE SUPPLIER HAS OFFERED AND HERCULES HAS ACCEPTED A 50% RECAPTURE PROVISION; THAT IS ANY-TIME DURING THIS LEASE, HERCULES MAY EXERCISE A BUY OPTION AND IN SO DOING APPLY 50% OF THE PREVIOUSLY</p>				

000242

ORIGINAL COPY

WILLIAM M. PIERCE, PURCHASING MANAGER

BY

10-7-85



HER 13228-10 (7-83)

PURCHASE ORDER

CO, HERCULES AEROSPACE - BACCHUS WORKS
MAGNA, UT 84404
(801) 250-5911

PAGE: 4 of 4

REQUIRED DATE	VIA	BUS. CODE		F.O.B.		PURCHASE ORDER NO.		SUPL.	REL.
08/15/85	VENDOR'S TRUCK	C0		SP FPPD.CHGBAC		BACC07061			
BUYER		C/C	IND. CL.	TYPE CONTR.	TERMS	DATE			
R. C. WARING		C	SO	FP	NET CASH	06/07/85			

HERCULES INC
BACCHUS WORKS

BACCHUS UT 84044

0603301077
MODULAIRE INDUSTRIES
744 MONTGOMERY ST
SAN FRANCISCO CA 94111INSTRUCTIONS
TO VENDOR

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- DO NOT ADD UTAH SALES/USE TAX ON YOUR INVOICE. HERCULES INCORPORATED WILL SELF-ADDRESS AND PAY UTAH SALES/USE TAX DIRECT TO THE STATE OF UTAH WHEN APPROPRIATE PER TAX EXEMPTION CERTIFICATE NUMBER 89072.

DESCRIPTION	QUANTITY	PRICE	UNIT	AMOUNT
MADE LEASE PAYMENTS TOWARD PURCHASE. THIS RECAPTURE APPLIES TO INITIAL 2 YEAR LEASE PAYMENTS ONLY. • ANNEX 16: RECAPTURE PROVISIONS: IT IS NOTED THAT THE SUBJECT MOBILE OFFICE COMPLEX HAS A PURCHASE PRICE OF \$336,288.00 (PLUS TAX) AT THE TIME THIS LEASE COMMENCES. THE SUPPLIER HAS OFFERED AND HERCULES HAS ACCEPTED A 50% RECAPTURE PROVISION; THAT IS, ANY-TIME DURING THIS LEASE, HERCULES MAY EXERCISE A BUY OPTION AND IN SO DOING APPLY 50% OF THE PREVIOUSLY MADE LEASE PAYMENTS TOWARD PURCHASE. THIS RECAPTURE APPLIES TO INITIAL 2 YEAR LEASE PAYMENTS ONLY. • OTHER TERMS AND CONDITIONS OF LEASE: 1. ALL APPLICABLE PROPERTY TAX DURING THIS LEASE WILL PAID BY THE LESSOR, MODULAIRE INDUSTRIES . 2. INSURANCE - HERCULES IS SELF-INSURED UP TO \$100,000 AND IS INSURED BY A COMMERCIAL CARRIER OVER THIS AMOUNT AND AS SUCH WARRANTS THAT ADEQUATE INSURANCE COVERAGE EXISTS WHICH PROTECTS THE SUBJECT OFFICE COMPLEX AGAINST LOSS, DAMAGE, ETC.. 3. REPAIR AND MAINTENANCE - ANY REPAIR OR MAINTENANCE IN THE SHELL OF THE OFFICE COMPLEX, THE AIR CONDITIONING OR HEATING SYSTEM AND ETC. (EXCEPT ROUTINE JANITORIAL MAINTENANCE) WILL BE THE RESPONSIBILITY OF THE LESSOR, MODULAIRE INDUSTRIES • • • THIS PURCHASE ORDER NOT TO EXCEED				\$419,266
				000243

WILLIAM M. PIERCE, PURCHASING MANAGER

BY

ORIGINAL COPY

SPECIFICATION NO. 9106

MOBILE TRAILER LEASING
HERCULES INCORPORATED

BACCHUS WORKS
MAGNA, UTAH

MAY 1985
9578j

This specification states the requirements for leasing mobile trailers as they relate to the product and the vendor.

- a. Dimensions - A standard module size shall be 14' x 60'. Inside ceiling height shall be 8". All units shall be built with new quality materials according to the industry's Commercial Codes and Standards.
- b. Exterior - The exterior shall be covered with pre-finished Hi-Rib steel siding and trim over a 1/2-inch gypsum underlayment. All seams shall be locked and weatherproof. Wall color shall be a standard off-white. Roof trim color to be dark brown. Exterior walls shall be windowless.
- c. Skirting - Skirting shall be hi-rib steel siding to match exterior supported by a full wooden frame. Color shall be dark brown. Access doors shall be provided as designated by Hercules at the time of installation. Skirting shall be provided ~~completely~~ around exterior.
- d. Roof - The roof shall be properly sloped, covered and sealed using standing seam metal design. Full length rain metal guttering shall be provided to control runoff and protect entrances and stairways, color to match skirting. Guttering shall be installed at the site.

Steel roof beams or trusses shall be clear span the 60 ft. width of the trailer complex. The roof design live load shall be 40 psf.

- e. Chassis - The frame shall consist of two (2) longitudinal MPC 10 x 8.4 I-Beam members at 99.5" O.C. joined by 4" x 13 gauge cross members at 4' O.C. and front and rear plates of MPC 10 x 8.4 I-Beam.

26 GA.

000244

- f. Floor - The floor loading shall be 75 psf, unless designated otherwise.

Floor seams between modules shall be smooth under the floor covering. All floors shall be weather sealed and vermin proof. All floors shall be covered with Herculon carpeting with the exception of rest rooms and utility areas where continuous vinyl flooring shall be used. The colors and styles shall be selected by Hercules.

- g. Interior Walls - The walls shall be vinyl covered gypsum in halls and office areas. At least two contrasting colors shall be selected by Hercules. Rest room walls shall be white Marlite or equivalent. Walls shall be straight vertical and supported to minimize deflection. Trim shall be provided in corners, at edges and other locations as required. Trim color shall be dark brown. Wall base to be 4 in. min. matching trim or be carpeting matching floor with dark brown cap.
- h. Ceilings - A suspended T-bar system shall be used. Acoustical tile sections 2' - 0" x 4' - 0" layed in a T-bar grid shall be suspended from the trusses using #12 gage wire. Wire spacing shall be a maximum of 48" O.C. Telephone and computer wiring will be accessed through the ceiling space.
- i. Insulation - The ceiling shall be insulated to an R30 factor, the exterior walls to R11 and the floor to R19 with fiber glass insulation material.
- j. Doors - The interior office door size shall be 3' 0" x 6' 8". Hinges shall be Heavy Duty brass butts inset into the door and jamb. A platform and stairway shall be provided at each entrance. Platform height shall be measured after trailers are on the site and level. Platform surface and stair treads, shall be constructed of Irving "Close Mesh" type CM-1 grating steel or aluminum. All work shall conform to OSHA Standards.

Platforms shall be made of treated wood or painted steel and shall be constructed to suit grade. Platform elevation to match floor elevation.

Exterior doors and frames shall be of heavy duty steel construction. Size shall be 3' 0" x 6' 8". One door shall be a 4' 0" x 6' 8". Each door shall be equipped with a heavy duty lock set and hydraulic closer. Window portion of the exterior door shall be lexan or plexiglass. Weather stripping shall be used to seal exterior doors.

Locations of doors and directions of swing are designated on the attached floor plan.

- k. Lighting - The office lighting shall provide a minimum of 75 foot-candles illumination at desk height. Halls shall have a minimum of 30 ft. candle illumination. Energy efficient recessed fluorescent fixtures with diffusers shall be used. A minimum of two fixtures are required per office. Each corridor shall have one fixture equipped with an emergency lighting kit such as Universal's Fluor-O-Pac or equal. (Sylvania Super II Tubes, Advance Mark III Ballasts or equal).

Incandescent lighting shall be used at the outside step areas only. Utility room and rest rooms shall have fluorescent lighting.

Switches shall be provided in all offices. Three-way switches shall be provided at the end of hall ways and rooms with two separate entry doors. (Such as Conference rooms).

- l. Air Conditioning and Heating - Each module shall have an independent 36WA3 Bard Unit or equivalent for heating and air conditioning. The Bard unit and duct system shall be properly sized to the needs of each module configuration.

Return air shall be drawn through the ceiling and a proper end plenum to prevent noise and drafts in the end offices where the Bard units are mounted.

Thermostat wiring shall run to the center of each unit and terminate in the ceiling.

- m. Electrical - Electrical service shall be 208/120 volt, 60 hz, 100 amp, three wire, single phase and ground to each module. Entrance shall be from underneath the complex through rigid conduit to a 100 amp UL listed breaker panel in each module. The electrical installation shall meet all applicable national, local & Hercules codes and regulations.

Grounded duplex receptacles shall be provided, one on each wall, at standard height in the offices. One additional dedicated outlet Hubbell IG-5251 shall be provided per office.

Also, one additional outlet on any wall over 12 ft. long. A 208 volt, single phase, outlet shall be provided in each utility room.

To facilitate telephone and computer wiring, an electrical box and a length of 1/2" EMT conduit shall be installed to serve each office. The empty box shall be placed at standard outlet height, empty and without cover. The conduit shall be stubbed with plastic bushing above the header in the ceiling plenum. Location of box will be designated on the floor plan. Back to back rooms can be served by a common 3/4" conduit and double deep box.

STANAG FORM 26 JULY 1966 CONTRACT ADMINISTRATION REG. NO. 141678		AWARD/CONTRACT		PAGE 1	2
1. CONTRACT NO. N00020-81-E-0127		2. EFFECTIVE DATE 1980 Dec 05		3. REQUISITION/PURCHASE REQUEST/PROJECT NO FAR 311055SPN	
3. ISSUED BY CODE N00030 STRATEGIC SYSTEMS PROJECT OFFICE DEPT OF THE NAVY, WASHINGTON, DC 20376 Buyer/Symbol: T. Heilig/SPN-40 Phone: (202)695-7211 Autovon: 225-7211		4. ADMINISTERED BY (If other than block 3) NAVPBRO Hercules Aerospace Division Bacchus Works, P. O. Box 157 Magna, Utah 84044		5. CERTIFIED FOR NATIONAL DEFENSE UNDER 501 REG. 2 AND/OR DMS REG. 1. CODE N63319 ADP Point: N63319	
6. CONTRACTOR NAME AND ADDRESS CODE 28284 (Street, city, country, State, and ZIP code) Hercules Inc. Aerospace Division Bacchus Works P. O. Box 98 Magna, Utah 84044		7. FACILITY CODE 28284 Pre-award Survey: NONE		8. DELIVERY FOR DESTINATION <input type="checkbox"/> NATION <input checked="" type="checkbox"/> OTHER (See below) A	
9. DISCOUNT FOR PROMPT PAYMENT N/A		10. RFQ: 10. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK N/A			
11. SHIP TO/MARK FOR CODE N/A		12. PAYMENT WILL BE MADE BY CODE N/A			

13. THIS PROCUREMENT WAS ☐ ADVERTISED, ☒ NEGOTIATED, PURSUANT TO: ☒ the mutual agreement of the parties.
☐ 41 U.S.C. 232 (c)(1)

14. ACCOUNTING AND APPROPRIATION DATA
NO FUNDS INVOLVED

THE FOLLOWING CHECKED SECTIONS ARE CONTAINED IN THE CONTRACT:							
(X)	SEC		PAGE	(X)	SEC		PAGE
		PART I--THE SCHEDULE				PART III--LIST OF DOCUMENTS, EXHIBITS & OTHER ATTACHMENTS	
X	A	Contract Form	1				
X	B	Supplies/Services and Prices	2	X	J	List of Documents, Exhibits, and Other Attachments	6
	C	Description/Specifications				PART IV--GENERAL INSTRUCTIONS	
	D	Packaging and Marking					
	E	Inspection & Acceptance		X	K	Representations, Certifications, and Other State-ments of Offeror	7
	F	Deliveries or Per-formance					
X	G	Contract Administra-tion Data	2	X	L	Instructions and Conditions, and Notices to Offerors	17
X	H	Special Provisions	3				
		PART II--GENERAL PROVISIONS					
X	I	General Provisions	4		M	Evaluation Factors for Award	

21. TOTAL AMOUNT OF CONTRACT: **See Schedule**

CONTRACTING OFFICER WILL COMPLETE BLOCK 22 OR 26 AS APPLICABLE

22. <input checked="" type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 4 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this contract; (b) the solicitation, if any; and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. Attachments are listed herein.	26. <input type="checkbox"/> AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made to it, which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer; and (b) this award contract. No further contractual document is necessary.
---	--

NAME OF CONTRACTOR HERCULES INCORPORATED BY <i>[Signature]</i> (Signature of person authorized to sign)	27. UNITED STATES OF AMERICA BY <i>[Signature]</i> (Signature of Contracting Officer)
--	---

24. NAME AND TITLE OF SIGNER (Type or print) HERCULES INCORPORATED	25. DATE SIGNED 00024
--	---------------------------------

PART I - THE SCHEDULE

SECTION B - SUPPLIES/SERVICES AND PRICES

The parties hereto agree that the terms and conditions of this facilities use contract shall apply to those facilities provided to the Contractor by the Government, Department of the Navy, Strategic Systems Project Office (SSPO) for the Contractor's use in performance of contract or subcontracts, or both, for the Fleet Ballistic Missile (FBM) system. The Contractor agrees to use, maintain, account for, and dispose of such facilities in accordance with the terms and conditions of this facilities use contract.

SECTION G - CONTRACT ADMINISTRATION DATA

- a. Except as specified elsewhere in this contract, the Naval Plant Branch Representative Office (NAVPBRO), Hercules Aerospace Division, Bachus Works, P. O. Box 157, Magna, Utah 84044 is designated as the Contract Administration Office (CAO) having cognizance of this contract for performing all normal contract administration functions listed in DAR 1-406(c).
- b. All correspondence pertaining to this contract and requiring action not delegated to NAVPBRO Magna shall be forwarded via the cognizant Administrative Contracting Officer (ACO), NAVPBRO Magna to:

Department of the Navy
Strategic Systems Project Office
Washington, DC 20376
(Attn: T. Heilig, SPN-40)

000248

SECTION H - SPECIAL PROVISIONS

Prevention of Mercury Contamination:

If, and to the extent that, this contract calls for work to be performed by the Contractor in a submarine or in the engineering spaces of a nuclear-powered surface ship, the Contractor, in connection with such work, shall not bring into or utilize in the submarine or in the engineering spaces of nuclear-powered surface ships any equipment, instrument, or other device containing functional mercury, unless such equipment, instrument, or device has been approved by the Contracting Officer. Functional mercury is that mercury or mercury compound required for proper operation of the supplies, or without the presence of which, the supplies would fail to function properly.

Facilities:

- a. Facilities heretofore provided to the Contractor for use in performance of contracts or subcontracts for the FBM system are identified in the attachment to Hercules Inc. ltr 0121/9/72-10828 of 10 November 1980, which is hereby incorporated by reference. This list shall be revised from time to time, as necessary, to reflect additions to and deletions from the list of facilities which have been provided to the Contractor for use in the performance of contracts or subcontracts for the FBM system.
- b. Unless otherwise approved by the ACO, NAVPBRO, all facilities covered hereunder shall be located and used at Hercules Inc., Bacchus Works Plant #1, Magna, Utah, Plant #2 in Clearfield, Utah, the Navy-owned Plant #81 in Magna, Utah and the Tekoi Test Range.
- c. The Contractor shall, unless otherwise directed in writing by the Principal Contracting Officer (PCO) (SPN), give first priority of use for the facilities accountable under this contract to work for SSPO (Code SP-27).

Property Reporting:

- a. On or before 1981 December 05, and annually thereafter, the Contractor shall submit to the PCO via the ACO, NAVPBRO, an updated list indicating the following information for all facilities which are accountable under this contract:
 - (1) Abbreviated description, acquisition cost, and year of acquisition of each item together with the total cost of all facilities.
 - (2) Identification number assigned to each item.
- b. This contract supersedes Contract N00030-76-C-0121.

Contaminated Government Property:

Notwithstanding any other provisions of this contract, the Contractor shall not be required to sell any Government property and/or material determined by the Contractor and approved by the cognizant Government Property Administrator for the Contractor's plant to have become contaminated in any manner to the extent that some may be injurious to the health and/or life of any would-be purchaser.

00024

PART II - GENERAL PROVISIONS

SECTION I - GENERAL PROVISIONS, FACILITIES USE

The following provisions are attached hereto in full and are agreed to by the parties to this contract:

<u>Clause No.</u>	<u>Title and Date</u>	<u>Text Source</u>	<u>Attached Page No.</u>
1.	Definitions (1964 Sep)	DAR 7-702.1 & 7-103.1	1
2.	Use and Charges (1979 Mar)	DAR 7-702.12	1
3.	Allowable Cost and Payment (1965 Jul)	DAR 7-704.3	3
4.	Limitation of Cost (1964 Sep)	DAR 7-702.11	4
5.	Location of the Facilities (1964 Sep)	DAR 7-702.8	4
6.	Maintenance (1964 Sep)	DAR 7-702.14	4
7.	Inspection (1964 Sep)	DAR 7-702.6	5
8.	Title (1964 Sep)	DAR 7-702.15 as modified by 7-704.9	6
9.	Access (1964 Sep)	DAR 7-702.16	6
10.	Property Control (1969 Apr)	DAR 7-702.17	6
11.	Representations and Warranties (1964 Sep)	DAR 7-702.5	6
12.	Government Bills of Lading (1964 Sep)	DAR 7-702.9	7
13.	Liability for the Facilities (1976 Oct)	DAR 7-702.18	7
14.	Indemnification of the Government (1964 Sep)	DAR 7-702.20 as modified by 7-704.15	9
15.	Notice of Use of the Facilities (1968 Jun)	DAR 7-702.23	9
16.	Termination of the Use of the Facilities (1964 Sep)	DAR 7-702.24	10
17.	Period of This Contract (1964 Sep)	DAR 7-702.25	10
18.	Disposition of the Facilities (1968 Apr)	DAR 7-702.26	10
19.	Failure to Perform (1964 Sep)	DAR 7-702.27 as modified by 7-704.20	11
20.	Disputes (1980 June)	DAR 7-103.12(a)	11

<u>Clause No.</u>	<u>Title and Date</u>	<u>Text Source</u>	<u>Attached Page No.</u>
21.	Military Security Requirements (1971 Apr) (ALT)	DAR 7-104.12 as modified by 7-702.29 & 7-704.22	12
22.	Officials Not to Benefit (1949 Jul)	DAR 7-103.19	13
23.	Gratuities (1952 Mar)	DAR 7-104.16	13
24.	Covenant Against Contingent Fees (1958 Jan)	DAR 7-103.20	13
25.	Convict Labor (1975 Oct)	DAR 7-104.17	13
26.	Supersedure (1964 Sep)	DAR 7-704.31	14
27.	Audit by Department of Defense (1975 Jun)	DAR 7-104.41(a) as modified by 7-104.41(b)	14
28.	Commercial Bill of Lading Notations (1969 Dec)	DAR 7-203.14	15
29.	Improvements to Building or Land Owned by the Government (1964 Sep)	DAR 7-705.7	15
30.	Interest (1972 May)	DAR 7-104.39	15
31.	Facilities Equipment Modernization (1976 Jul)	DAR 7-705.22	16
32.	Change to Naval Sea Systems Command	SSPO	16
33.	Order of Precedence	SSPO	16
34.	Taxation (Facilities Use)	SSPO	17
35.	Failure of the Government to Insist on Compliance	NAVORD	17
36.	Notices	NAVORD	17
37.	Equal Opportunity (1978 Sep)	DAR 7-103.18(a)	18

The following provision shall apply when the amount of this contract exceeds \$1,000:

38.	Assignment of Claims (1962 Feb)	DAR 7-103.8	19
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The following provision shall apply when the amount of this contract is \$2,500 or more:

39.	Affirmative Action for Handicapped Workers (1976 May)	DAR 7-103.28	19
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The following provision shall apply when the amount of this contract exceeds \$2,500:

40.	Contract Work Hours and Safety Standards Act - Overtime Compensation (1971 Nov)	DAR 7-103.16(a)	20
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<u>Clause No.</u>	<u>Title and Date</u>	<u>Text Source</u>	<u>Attached Page No.</u>
The following provision shall apply when the amount of this contract is \$10,000 or more:			
41.	Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (1976 Jul)	DAR 7-103.27	20

The following provisions shall apply when the amount of this contract exceeds \$10,000:

42.	Examination of Records by Comptroller General (1975 Jun)	DAR 7-104.15	22
43.	Competition in Subcontracting (1962 Apr)	DAR 7-104.40	23

The following provisions shall apply when the amount of this contract exceeds \$100,000:

44.	Payment for Overtime Premiums (1967 Jun)	DAR 7-203.27	23
45.	Price Reduction for Defective Cost or Pricing Data (1970 Jan)	DAR 7-104.29(a)	23
46.	Subcontractor Cost or Pricing Data (1970 Jan)	DAR 7-104.42(a)	24
47.	Clean Air and Water (1975 Oct)	DAR 7-103.29	25

PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

SECTION J - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

<u>Document</u>	<u>Description</u>	<u>No. of Pages</u>
	General Provisions for Facilities Use Contracts	25

PART IV - GENERAL INSTRUCTIONS

SECTION K - REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFEROR

The Offeror/Quoter represents and certifies as part of his proposal/quotation that: (Check or complete all applicable boxes or blocks.)

1. CONTINGENT FEE (1974 APR)

(a) He ☐ has, ☒ has not, employed or retained any company or person (other than a full-time, bona fide employee working solely for the offeror/quoter) to solicit or secure this contract, and (b) he ☐ has, ☒ has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror/quoter) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona-fide employee," see Code of Federal Regulations, Title 41, Subpart 1-1.5.)

If the offeror/quoter, by checking the appropriate box provided therefor, has represented that he has employed or retained a company or person (other than a full-time bona fide employee working solely for the offeror/quoter) to solicit or secure this contract, or that he has paid or agreed to pay any fee, commission, percentage, or brokerage fee to any company or person contingent upon or resulting from the award of this contract, he shall furnish, in duplicate, a complete Standard Form 119, Contractor's Statement of Contingent or Other Fees. If offeror/quoter has previously furnished a completed Standard Form 119 to the office issuing this solicitation, he may accompany his proposal/quotation with a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous solicitation or contract, if any, in connection with which such form was submitted, and (c) representing that the statement in such form is applicable to this proposal/quotation.

2. DELETED

3. REGULAR DEALER-MANUFACTURER (Applicable only to supply contracts exceeding \$10,000)

He is a ☐ regular dealer in, ☐ manufacturer of, the supplies offered.

00025

4. AFFIRMATIVE ACTION COMPLIANCE (1979 SLP)

The bidder (or offeror) represents that (1) he ☒ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) or (2) he ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

5. WOMAN-OWNED BUSINESS (1978 SEP)

The offeror represents that the firm submitting this offer ☐ is, ☒ is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management. For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, women-owned if this information is available.

6. SMALL BUSINESS

He ☐ is, ☒ is not, a small business concern. A small business concern for the purpose of Government contracting is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.) If the offeror/quoter is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

7. BUY AMERICAN CERTIFICATE

The offeror/quoter hereby certifies that each end product, except the end products listed below, is a domestic source end product (as defined in the clause entitled "Buy American Act"); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

EXCLUDED END PRODUCTS	COUNTRY OF ORIGIN

000254

8. PERCENT FOREIGN CONTENT (1978 SEP)

Approximately _____ percent of the proposed contract price represents foreign content or effort.

9. TYPE OF BUSINESS ORGANIZATION

He operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☒ a corporation, incorporated under the laws of the State of Delaware.

10. PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (1973 APR)

The offeror represents that he ☒ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in Section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114; that he ☒ has, ☐ has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

11. DISPOSAL OF GOVERNMENT PRODUCTION AND RESEARCH PROPERTY

Offerors shall indicate if contract performance involves the acquisition of Government production and research property, the disposal of which may be restricted by patent or other rights.

☐ YES ☒ NO

12. DISCLOSURE STATEMENT - COST ACCOUNTING PRACTICES AND CERTIFICATION (1978 MAR)

Any contract in excess of \$100,000 resulting from this solicitation except (i) when the price negotiated is based on: (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulations; (ii) contracts awarded to small business concerns (as defined in DAR 1-701.1); or (iii) contracts which are otherwise exempt (see 4 CFR 331.30(b)) shall be subject to the requirements of the Cost Accounting Standards Board. Any offeror submitting a proposal, which, if accepted, will result in a contract subject to the requirements of the Cost Accounting Standards Board, must, as a condition of contracting, submit a Disclosure Statement as required by regulations of the Board. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation (see (I) below) unless (i) the offeror, together with all divisions, subsidiaries,

and affiliates under common control, did not receive net awards exceeding the monetary exemption for disclosure as established by the Cost Accounting Standards Board (see (II) below); (ii) the offeror exceeded the monetary exemption in the cost accounting period immediately preceding the cost accounting period in which this proposal was submitted but, in accordance with the regulations of the Cost Accounting Standards Board, is not yet required to submit a Disclosure Statement (see (III) below); (iii) the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal (see (IV) below); or (iv) postaward submission has been authorized by the Contracting Officer. See 4 CFR 351.70 for submission of copy of Disclosure Statement to the Cost Accounting Standards Board.

CAUTION: A practice disclosed in a Disclosure Statement shall not be deemed to be, by virtue of such disclosure, a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

Check the appropriate box below:

☐ I. CERTIFICATE OF CONCURRENT SUBMISSION OF DISCLOSURE STATEMENT(S)

The offeror hereby certifies that he has submitted, as a part of his proposal under this solicitation, copies of the Disclosure Statement(s) as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) (see DoD Directory of Contract Administration Components (DoD 4105.59H)); and (ii) one copy to the cognizant contract auditor.

Date of Disclosure Statement(s): _____

Name(s) and Address(es) of _____

Cognizant ACO(s) where filed: _____

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement(s).

☐ II. CERTIFICATE OF MONETARY EXEMPTION

The offeror hereby certifies that he, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated national defense prime contracts and subcontracts subject to the Cost Accounting Standards totaling more than \$10 million in his cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if his status changes prior to an award resulting from this proposal he will advise the Contracting Officer immediately.

CAUTION: Offerors who submitted a Disclosure Statement under the filing requirements previously established by the Cost Accounting Standards Board may claim this exemption only if the dollar volume of CAS-covered national

defense prime contract and subcontract awards in their preceding cost accounting period did not exceed the \$10 million threshold and the amount of this award will be less than \$10 million. Such offerors will continue to be responsible for maintaining the Disclosure Statement and following the disclosed practices on CAS-covered prime contracts and subcontracts awarded during the period in which a Disclosure Statement was required.

[] III. CERTIFICATE OF INTERIM EXEMPTION

The offeror hereby certifies that (i) he first exceeded the monetary exemption for disclosure, as defined in (II) above, in his cost accounting period immediately preceding the cost accounting period in which this proposal was submitted, and (ii) in accordance with the regulations of the Cost Accounting Standards Board (4 CFR 351.40(f)), he is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period he will immediately submit a revised certificate to the Contracting Officer, in the form specified under (I) above or (IV) below, as appropriate, to verify his submission of a completed Disclosure Statement.

CAUTION: Offerors may not claim this exemption if they are currently required to disclose because they were awarded a CAS-covered national defense prime contract or subcontract of \$10 million or more in the current cost accounting period. Further, the exemption applies only in connection with proposals submitted prior to expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

☒ IV. CERTIFICATE OF PREVIOUSLY SUBMITTED DISCLOSURE STATEMENT(S)

The offeror hereby certifies that the Disclosure Statement(s) were filed as follows:

Date of Disclosure Statement(s): _____

Name(s) and Address(es) of _____

Cognizant ACO(s) _____

SEE ATTACHED PAGE

The offeror certifies that practices used in estimating cost in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement(s).

13. COST ACCOUNTING STANDARDS - EXEMPTION FOR CONTRACTS OF \$500,000 OR LESS (1978 MAR)

If this proposal is expected to result in the award of a contract of \$500,000 or less, the offeror shall indicate whether the exemption to the Cost Accounting Standards clause (7-104.83(a)(1)) under the provisions of 4 CFR 331.30(b)(8) is claimed. Failure to check the box below shall mean that the resultant contract is subject to the Cost Accounting Standards clause or that the offeror elects to comply with such clause.

DISCLOSURE STATEMENT - COST ACCOUNTING PRACTICES AND CERTIFICATION

CERTIFICATE OF PREVIOUSLY-SUBMITTED
DISCLOSURE STATEMENT

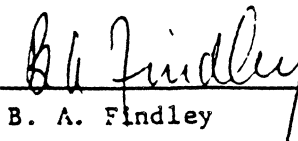
The offeror hereby certifies that the Disclosure Statement
was filed as follows:

<u>Reporting Unit</u>	<u>Date</u>	<u>Filed</u>
Bacchus Plant Magna, Utah		
Parts I - III V -VI	1 August 1972 As Amended 17 October 1977 Effective 1 Jan 1978	Naval Plant Branch Representative Office P.O. Box 157 Magna, Utah 84044 Attn: Mr. David W. Evans Administrative Contracting Officer Tel: (801) 250-5911, Ext. 2748 or 2906
Part IVB	1 August 1972 Revision Pending	
Corporate and Aerospace Group		
Part IVA	23 June 1980 and Effective 1 Jan 1979 (Corporate Reorganization)	Naval Plant Branch Representative Office P.O. Box 157 Magna, Utah 84044 Attn: Mr. Todd A. Jensen Corporate Administrative Contracting Officer Tel: (801) 250-5911, Ext. 3085 or 2906
Corporate Home Office:		
Part VII - VIII	1 Aug. 1972 Revision 5 23 June 1980 Effective 1 Jan 1979 (Corporate Reorganization) and Effective 1 Jan 1980	

Offeror further certifies that practices used in estimating costs in pricing Proposal N0003081E0127 are consistent with the Cost Accounting practices disclosed in the Disclosure Statement. It should be noted, however, that Cost Accounting Standard 418, "Allocation of Direct and Indirect Costs," became effective 20 September 1980 and Hercules' Disclosure Statement and rates have not been revised to incorporate this change.

HERCULES INCORPORATED

9 January 1981
(Date)


B. A. Findley

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☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 4 CFR 331.30(b)(8) and certifies that he has received notification of final acceptance of all deliverable items on (i) all prime contracts or subcontracts in excess of \$500,000 which contain the Cost Accounting Standards clause, and (ii) all prime contracts or subcontracts of \$500,000 or less awarded after January 1, 1975 which contain the Cost Accounting Standards clause. The offeror further certifies he will immediately notify the Contracting Officer, in writing, in the event he is awarded any other contract or subcontract containing the Cost Accounting Standards clause subsequent to the date of this certificate but prior to the date of any award resulting from this proposal.

14. COST ACCOUNTING STANDARDS - ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE (1978 MAR)

If the offeror is eligible to use the modified provisions of 4 CFR 332 and elects to do so, he shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause (DAR 7-104.83(a)(2)) in lieu of the Cost Accounting Standards clause (7-104.83(a)(1)).

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause (DAR 7-104.83(a)(1)) under the provisions of 4 CFR 331.30(b)(2), and certifies that he is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause (DAR 7-104.83(a)(2)) because (i) during his cost accounting period immediately preceding the period in which this proposal was submitted, he received less than \$10 million in awards of CAS-covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of his total sales during that cost accounting period. The offeror further certifies that if his status changes prior to an award resulting from this proposal he will advise the Contracting Officer immediately.

CAUTION: Offerors may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a contract of \$10 million or more or if, during their current cost accounting period, they have been awarded a single CAS-covered national defense prime contract or subcontract of \$10 million or more.

15. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS (1978 MAR)

The offeror shall indicate below whether award of the contemplated contract would require, in accordance with paragraph (a)(3) of the Cost Accounting Standards Clause (7-104.83(a)(1)), a change in his established cost accounting practices affecting existing contracts and subcontracts.

☐ YES ☒ NO

NOTE: If the offeror has checked "yes" above, and is awarded the contemplated contract, he will be required to comply with the Administration of Cost Accounting Standards Clause (7-104.83(b)).

16. CLEAN AIR AND WATER CERTIFICATION (1977 JUN)

Applicable if the bid or offer exceeds \$100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.

The bidder or offeror certifies as follows:

- (i) any facility to be utilized in the performance of this proposed contract is--[], is not--~~X~~, listed on the Environmental Protection Agency List of Violating Facilities;
- (ii) he will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and
- (iii) he will include substantially this solicitation certification, including this paragraph (iii), in every nonexempt subcontract.

17. SMALL DISADVANTAGED BUSINESS CONCERN (1979 JULY)

(a) The offeror represents that he [] is, ~~X~~ is not, a small business concern owned and controlled by socially and economically disadvantaged individuals. The term "small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" means a small business concern --

(1) that is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially or economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more such individuals.

(b) The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (such as American Indians, Eskimos, Aleuts, and native Hawaiians), and other minorities or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

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N00030-81-E-0127

18. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (1975 OCT) (Applicable only to proposals where a firm-fixed price contract or fixed-price contract with escalation is to be awarded.)

(a) By submission of this bid or proposal, each bidder or offeror certifies, and in the case of a joint bid or proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) the prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or offeror or with any competitor;

(2) unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder or offeror and will not knowingly be disclosed by the bidder or offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and

(3) no attempt has been made or will be made by the bidder or offeror to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

(b) Each person signing this bid or proposal certifies that:

(1) he is the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (a) he is not the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (b) he has not participated, and will not participate in any action contrary to (a)(1) through (a)(3) above.

(c) This certification is not applicable to a foreign bidder or offeror submitting a bid or proposal for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A bid or proposal will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. Where (a)(2) above has been deleted or modified, the bid or proposal will not be considered for award unless the bidder or offeror furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances of the disclosure and unless it is determined that such disclosure was not made for the purpose of restricting competition.

19. CERTIFICATION OF NONSEGREGATED FACILITIES (1970 AUG) (Applicable to contracts, subcontracts, and to agreements with applicants who are themselves performing Federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause).

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By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually). NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

20. REQUIREMENT FOR TECHNICAL DATA CERTIFICATION (1974 APR)

The offeror shall submit with his offer a certification as to whether he has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in his offer; if so, he shall identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

21. ROYALTY INFORMATION (1961 AUG)

When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be furnished with offer, proposal, or quotation on each separate item of royalty or license fee:

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- (i) name and address of licensor;
- (ii) date of license agreement;
- (iii) patent numbers, patent application serial numbers or other basis on which the royalty is payable;
- (iv) brief description, including any part of model numbers of each contract item or component on which the royalty is payable;
- (v) percentage or dollar rate of royalty per unit;
- (vi) unit price of contract item;
- (vii) number of units; and
- (viii) total dollar amount of royalties;

DD Form 783, Royalty Report, is approved for use in furnishing the above information. In addition, if specifically requested by the Contracting Officer prior to execution of the contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

22. BID/PROPOSAL CERTIFICATION - WAGE AND PRICE STANDARDS (1979 SEP) (Applicable to contracts in excess of \$5 million, and indefinite delivery-type contracts under which cumulative orders are expected to exceed \$5 million.)


(a) By submission of this bid or offer, the bidder or offeror certifies to be in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR Part 705, Appendix, and Part 706).

(b) The clause entitled "Contract Certification - Wage and Price Standards," set forth elsewhere in this solicitation, shall be incorporated in any resulting contract except when waived by the Secretary.

23. ALTERATION OF TEXT OF SECTION K PROVISIONS

The offeror/quoter hereby certifies that he has made no alterations to the text of the provisions of this Section K other than those referenced in the following space by provision number:

6 January 1981
DATE


CONTRACTOR
HERCULES INCORPORATED
Bill A. Findley
Senior Contract Administrator

SECTION L - INSTRUCTIONS AND CONDITIONS, AND NOTICES TO OFFERORS/QUOTERS

1. ORDER OF PRECEDENCE (1973 APR)

In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the Specifications); (b) Terms and Conditions of the solicitation, if any; (c) General Provisions; (d) other provisions of the contract, when attached or incorporated by reference; and (e) the Specifications.

2. PRE-AWARD ON SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (1970 AUG)

In accordance with regulations of the Office of Federal Contract Compliance, 41 CFR 60.1, effective 1 July 1968, an award in the amount of \$1,000,000 or more will not be made under this solicitation unless the bidder and each of his known first-tier subcontractors (to whom he intends to award a subcontract of \$1,000,000 or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

3. EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (1977 JAN)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

4. NOTIFICATION OF VISA DENIAL (1978 SEP)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States on the basis that such individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). Therefore, the Contractor agrees to notify the Department of State, Washington, D.C., Attention: Director, Bureau of Politico-Military Affairs, and the Director, OFCCP, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract and it believes such denial is attributable to race, religion, sex, or national origin of the employee or potential employee.

5. SITE VISIT (1969 OCT)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract.

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the extent such information is reasonably obtainable. In no event will a failure to inspect the site constitute grounds for a claim after award of the contract.

6. IDENTIFICATION OF RESTRICTED RIGHTS COMPUTER SOFTWARE (1977 APR)

The offeror's attention is called to the requirement in the "Rights in Technical Data and Computer Software" clause that any restrictions on the Government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which he desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

7. LICENSES AND PERMITS (1977 APR)

Offerors without necessary operating authority may submit offers, but the offerors shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits prior to award of a resultant contract and for complying with all laws, ordinances, statutes and regulations in connection with the furnishing of the services herein.

8. RECOVERED MATERIAL (1979 MAR)

The Contractor certifies by signing this bid/proposal/quotation that recovered materials, as defined in DAR 1-2500.4, will be used as required by the applicable specifications.

*9. SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (NEGOTIATED) (1980 AUG)

(a) This provision does not apply to small business concerns.

(b) The apparent successful offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns and which shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract. As a minimum, the subcontracting plan shall include --

[see next page]

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. For the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business concerns.

e. A statement of the method used for solicitation purposes (e.g., did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the offeror who will administer the subcontracting plan of the offeror and a description of the duties of such individual;

(3) A description of the efforts the offeror will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause entitled "Utilization of Small Business and Small Disadvantaged Business Concerns" in all subcontracts which offer further subcontracting possibilities in the United States and will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 or, in the case of a contract for the construction of any public facility, \$1 million, to adopt a plan in consonance with this clause;

(5) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the offeror with the subcontracting plan; and

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

a. Small and disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over \$100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;

(ii) contacts with business development organizations; and

(iii) attendance at small and disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc.; and

(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of this effort through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel regarding the support of small and small disadvantaged business firms.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit DD Form 1140-1 in accordance with instructions provided on the form.

(e) The offeror understands that:

(1) An acceptable plan must, in the determination of the Contracting Officer, provide the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the performance of the contract.

(2) The Contracting Officer shall notify the Contractor in writing of his reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the Contractor sufficient time to modify the plan within the time limits prescribed.

(3) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(4) The failure of any Contractor or subcontractor to comply in good faith with (i) the clause entitled "Utilization of Small Business and Small Disadvantaged Business Concerns" or (ii) an approved plan required by this "Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated)" provision, will be a material breach of such contract or subcontract.

(f) In the acquisition of commercial products, the offeror further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's commercial production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

GENERAL PROVISIONS FOR FACILITIES USE CONTRACTS

1. DEFINITIONS (1964 SEP)

As used throughout this contract, the following terms shall have the meanings set forth below

(a) The term "Head of the Agency" or "Secretary" means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Head of the Agency or the Secretary

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

(c) Except as otherwise provided in this contract, the term "subcontract" includes but is not limited to purchase orders, changes and/or modifications thereto.

(d) "Related procurement contract" means a Government contract or subcontract thereunder for furnishing supplies or services of any description, for the performance of which the use of the Facilities is or may be authorized.

(e) "Facilities" means, for purposes of this contract, all property provided under this contract.

(f) The phrase "Contractor-owned" in paragraph (d) under clause 18 entitled "Disposition of the Facilities" means Contractor-owned or leased.

2. USE AND CHARGES (1979 MAR)

(a) The Contractor may use the Facilities without charge in the performance of:

- (i) prime contracts with the Government which specifically authorize use without charge,
- (ii) subcontracts held by the Contractor under Government prime contracts or subcontracts of any tier thereunder if the Contracting Officer having cognizance of the prime contract concerned has authorized use without charge by approving a subcontract specifically authorizing such use or has otherwise authorized such use in writing, and
- (iii) other work with respect to which the Contracting Officer has authorized use without charge in writing.

(b) Subject to the payment of a rental therefor, the Contractor may use all or part of the Facilities in the performance of work other than that specified in paragraph (a) above, as authorized in writing by the Contracting Officer or as specifically provided in the Schedule. Use so authorized shall not be construed to constitute a waiver of any rights the Government may have under this contract to terminate the Contractor's right to use all or any part of the Facilities. The amount of rental to be paid for the right to use the Facilities under this paragraph (b) shall be determined in accordance with the following procedures.

(1) The following bases are or shall be established in writing for the rental computation prescribed in subparagraph (2) below in advance of any use of the Facilities under this paragraph

- (i) The rental rates for the right to use the Facilities shall be those set forth in the Attachment.
- (ii) The acquisition cost of the Facilities shall be the total cost to the Government, as determined by the Contracting Officer of each item of the Facilities, including the cost of transportation and installation, if such costs are borne by the Government. When Government-owned special tooling or accessories are rented with any item of the Facilities, the acquisition cost shall be increased to include the price charged the Government for such tooling or accessories. When any item of the Facilities has been modernized by substantial rebuilding at Government expense so as to enhance its original capability, the acquisition cost for that item shall include the increased value, as determined by the Contracting Officer, that such rebuilding and modernization

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(iii) For the purpose of determining the amount of rental due under subparagraph (2) below, the rental period shall be not less than one month nor more than six months, as approved by the Contracting Officer.

(iv) For the purpose of computing any credit under subparagraph (2) below, the measurement unit for determining the amount of use of the Facilities by the Contractor shall be direct labor hours, sales, hours of use, or any other measurement unit which will result in an equitable apportionment of the rental charge, as approved by the Contracting Officer.

(2) The Contractor shall compute the amount of rentals to be paid for each rental period, using the bases established pursuant to subparagraph (1) above. The rental rates shall be applied to the acquisition cost of such of the Facilities as may have been authorized for use in advance pursuant to this paragraph (b), for each rental period. The full charge for each rental period, so determined, shall be reduced by a credit in the amount of such rental as would otherwise be properly allocable to work with respect to which the use of the Facilities without charge is authorized in accordance with paragraph (a) above. Such credit shall be computed by multiplying the full rental for the rental period by a fraction whose numerator is the amount of use of the Facilities by the Contractor without charge during such period, and whose denominator is the total amount of use of the Facilities by the Contractor during such period.

(3) The Contractor shall submit to the Contracting Officer within ninety (90) days after the close of each rental period a written statement of the use made of the Facilities by the Contractor and the rental due the Government hereunder, and shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(4) If the Contractor fails to submit the statement within the prescribed ninety (90) day period, the Contractor shall be liable for the full rental for the period in question, subject to the exception stated in subparagraph (5) below.

(5) If the Contractor's failure to submit the statement within the prescribed ninety (90) day period arose out of causes beyond the control and without the fault or negligence of the Contractor, the Contracting Officer shall grant to the Contractor in writing a reasonable extension of time in which to make such submission.

(c) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the Facilities to the performance of contracts and subcontracts of the Department of theNavy..... and shall not undertake any work involving the use of the Facilities which would interfere with the performance of existing Government contracts or subcontracts.

(d) Concurrently with the submission of the written statement prescribed by paragraph (b)(3) above, the Contractor shall pay the rental due the Government under this clause by check made payable to the office designated for contract administration. Each check shall be mailed or delivered to the Contracting Officer.* Receipt and acceptance by the Government of the Contractor's checks pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder unless the Contractor is notified in writing within one hundred eighty (180) days following such receipt that the amount received is not regarded by the Government as the final amount due.

(e) If the Contractor uses any item of the Facilities without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part thereof in which such unauthorized use occurs *provided however*, that the Secretary concerned may, in writing, waive the Contractor's liability for such unauthorized use if he determines that circumstances amounting to gross inequity justify the waiver. The acceptance of any rental by the Government hereunder shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the Facilities or any other failure to perform this contract according to its terms.

*In contracts of the Department of the Navy, insert "Navy Regional Finance Center, Washington, D.C." in lieu of "the Contracting Officer."

ATTACHMENT

Rental Rates

The following rental rates are the rental rates referred to in the clause of this contract entitled "Use and Charges:"

- (i) For land and land preparation, buildings, building installations, and land installations other than those items specified in (ii) below a fair and reasonable rental shall be established, based on sound commercial practice
- (ii) For industrial plant equipment of the types covered by the following Federal Supply Classes:

<i>Federal Supply Classes</i>	<i>Description</i>
3405, 3408, 3410, 3411 through 3419	Machine Tools
3441 through 3449	Secondary Metalforming and Cutting Machines

The following rates shall apply:

<i>Age of Equipment</i>	<i>Monthly Rental Rate</i>
0 to 2	3%
Over 2 to 3 years	2%
Over 3 to 6 years	1.5%
Over 6 to 10 years	1.0%
Over 10 years75%

The age of each item of the Facilities shall be based on the year in which it was manufactured, with an annual birthday on 1 January of each year thereafter. On 1 January following the date of manufacture, the item shall be considered one year old; and on each succeeding January 1st, it shall become one year older. For example, if an item of equipment is manufactured on 15 July 1958, it will be considered to be one year old on 1 January 1959, two years old on 1 January 1960, three years old on 1 January 1961, and so forth. The item of equipment will be considered "over two years old" on and after 1 January 1960, "over six years old" on and after 1 January 1964, and "over ten years old" on and after 1 January 1968

- (iii) For personal property and equipment not covered in (i) or (ii) above, a rental shall be established at not less than the prevailing commercial rate, if any; or, in the absence of such rate, not less than two percent (2%) per month for electronic test equipment and automotive equipment; and not less than one percent (1%) per month for all other property and equipment.

3. ALLOWABLE COST AND PAYMENT (1965 JUL)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract, which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Section XV, Part 5, of the Armed Services Procurement Regulation as in effect on the date of this contract; and (ii) the terms of this contract.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred in the performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

4. LIMITATION OF COST (1964 SEP)

(a) It is estimated that the total cost to the Government for the performance of work under this contract which is provided herein to be at Government expense will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform such work within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of such work in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule, or if at any time the Contractor has reason to believe that the total cost to the Government for the performance of such work will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of such work.

(b) The Government shall not be obligated to reimburse the Contractor under this contract for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue the performance of work under this contract which is provided herein to be at Government expense, or to incur costs therefor, in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performing such work. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

5. LOCATION OF THE FACILITIES (1964 SEP)

The Contractor may use the Facilities at any of the locations specified in the Schedule, and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as he may deem necessary for the protection of the Government's interest in the Facilities involved. Notwithstanding any inconsistency with the provisions of this contract, such terms and conditions shall prevail.

6. MAINTENANCE (1964 SEP)

(a) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the Facilities in accordance with sound industrial practice, including protection, preservation, maintenance, and repair of the Facilities, and with respect to equipment, normal parts replacement.

(b) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer in writing a proposed normal maintenance program, including an appropriate maintenance records system, in sufficient detail to show its adequacy as a normal maintenance program. To the extent that the Contracting Officer and the Contractor agree upon such a program, it shall become the normal maintenance obligation of the Contractor; and the Contractor shall carry it out in satisfaction of (i) his normal maintenance obligation under paragraph (a) above, and (ii) his obligation to maintain records under paragraph (e) below.

(c) The Contracting Officer may at any time specify, by written notice to the Contractor, a reduction in the work required by the then current normal maintenance obligation of the Contractor. After receipt of such notice, the Contractor shall perform only such work as is specified therein. If any such notice causes a decrease in the cost of performing the normal maintenance obligation, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such decrease.

(d) The Contractor shall perform such maintenance work as may be directed by the Contracting Officer in writing. To the extent that such work is in excess of the Contractor's then current normal maintenance obligation under paragraphs (a) through (c) above, such work shall be at Government expense. The Contractor shall notify the Contracting Officer in writing whenever, in accordance with sound industrial practice, the Facilities require any work in excess of such normal maintenance obligation.

(e) The Contractor shall keep records of the work done on the Facilities in performing his obligations under this clause, and shall afford the Government adequate opportunity to inspect all such records. The Contractor shall deliver such records to the Government or third persons, if so directed by the Contracting Officer, whenever the Facilities to which they relate are disposed of hereunder.

(f) The Contractor's obligation under this clause shall continue, with respect to each item of the Facilities, until such item is removed, abandoned, or otherwise disposed of, until expiration of the ninety (90) day period prescribed in paragraph (c) of the "Disposition of the Facilities" clause, or until the Contractor has discharged his obligations under this contract with respect to such items, whichever last occurs.

7. INSPECTION (1964 SEP)

(a) The Facilities and work called for by this contract shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the Facilities and work called for by this contract. The Government, through any authorized representative, may inspect such Facilities and work at the plant or plants of the Contractor or any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work to be performed by the Contractor under this contract or any related procurement contract.

(b) The Contracting Officer may at any time require the Contractor to remedy by correction or replacement any Facilities or work which are defective or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) below, such corrections and replacements shall be carried out at Government expense if under the terms of this contract the Facilities or work thus corrected or replaced were initially provided or required to be performed at Government expense.

(c) The Contracting Officer may at any time require the Contractor, without cost to the Government hereunder or under any of its related procurement contracts or subcontracts, to correct or replace any Facilities or work which are defective or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to

(i) fraud, lack of good faith, or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives who has supervision or direction of—

(A) all or substantially all of the Contractor's business,

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) a separate and complete major industrial operation in connection with the performance of this contract; or

(ii) The conduct of one or more individual employees selected or retained by the Contractor after any of the supervisory personnel described in (i) above has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) Corrected or replaced Facilities or work shall be subject to the provisions of this clause in the same manner and to the same extent as Facilities or work originally completed under this contract.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer periods as may be specified in this contract.

8. TITLE (1964 SEP)

(a) Title to the Facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities.

(b) Title to the Facilities shall not be affected by their incorporation in or attachment to any property not owned by the Government, nor shall any item of the Facilities be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall keep the Facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the Facilities.

(c) The Contractor may, with the written approval of the Contracting Officer, install, arrange or rearrange on premises furnished by the Government hereunder, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it is affixed to realty owned by the Government, unless it is so permanently attached to such realty as to be non-removable without substantial injury, as determined by the Contracting Officer to the property of the Government.

9. ACCESS (1964 SEP)

The Government and any persons designated by it shall at all reasonable times have access to the premises where any of the Facilities are located.

10. PROPERTY CONTROL (1969 APR)

The Contractor shall maintain adequate property control procedures and records, and a system of identification of the Facilities, in accordance with the provisions of Appendix B, "Control of Government Property in Possession of Contractors," or Appendix C, "Control of Government Property in Possession of Nonprofit Research and Development Contractors," of the Armed Services Procurement Regulation, as may be appropriate, in effect on the date of this contract.

11. REPRESENTATIONS AND WARRANTIES (1964 SEP)

(a) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any item of the Facilities. To the extent practicable, the Contractor shall be afforded an opportunity to inspect all items of Facilities that are to be furnished by the Government prior to the shipment of such Facilities to the Contractor. In the event that any item of such Facilities is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, within thirty (30) days after receipt and installation thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it, or (ii) effect repairs or modifications.

(b) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by the return or disposition, or the repair or modification, of any item of Facilities under paragraph (a) above.

12. GOVERNMENT BILLS OF LADING (1964 SEP)

All shipments of the Facilities shall be made on Government bills of lading, unless otherwise authorized by the Contracting Officer. The required number of such Government bills of lading will be furnished to the Contractor by and the Contractor shall be accountable therefor to the transportation activity designated by the Contracting Officer.

13. LIABILITY FOR THE FACILITIES (1976 OCT)

(a) The Contractor shall not be liable for any loss of or damage to the Facilities or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from

- (i) willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers or on the part of any of his managers, superintendents or other equivalent representatives who has supervision or direction of
 - (A) all or substantially all of the Contractor's business or
 - (B) all or substantially all of the Contractor's operations at any one plant or separate location, in which the Facilities are installed or located, or
 - (C) a separate and complete major industrial operation in connection with which the Facilities are used
- (ii) a failure on the part of the Contractor due to the willful misconduct or lack of good faith on the part of any of his directors, officers or other representatives mentioned in subparagraph (i) above
 - (A) to maintain and administer in accordance with the clause of the contract entitled "Maintenance" a program for maintenance, repair, protection and preservation of the Facilities or to take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Facilities,
 - (B) to establish, maintain and administer in accordance with the clause of the contract entitled "Property Control" a system for control of the Facilities.

Any failure of the Contractor to act as provided in (A) or (B) above shall be conclusively presumed to be a failure resulting from willful misconduct or lack of good faith on the part of such directors, officers or other representatives mentioned in subparagraph (i) above if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of such directors, officers or other representatives of the Government's disapproval, withdrawal of approval or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss of or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system or occurred during such time as an approved program or system for control of Government property was maintained.

- (iii) a risk for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule
- (iv) a risk expressly required to be insured pursuant to paragraph (c) of this clause, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater, or
- (v) a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement,

provided that if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(b) If the Contractor transfers the Facilities to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the Facilities as set forth above. However, the Contractor shall require the subcontractor to assume the risk of and be responsible for any loss or destruction of or damage to the Facilities while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the Facilities in as good condition as when received, except for reasonable wear and tear or for the utilization of the Facilities in accordance with the provisions of the prime contract.

(c) Unless expressly directed in writing by the Contracting Officer*, the Contractor shall not include as an element of price or cost under any contract with the Government any amount on account of the cost of insurance (including self-insurance) against any form of loss or damage to the Facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances, if so approved) as the Contracting Officer* shall require or approve. Such insurance shall contain provision for thirty (30) days prior notice to the Contracting Officer*, in the event of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited promptly with said Contracting Officer*. The Contractor shall, not less than thirty (30) days prior to the expiration of any insurance required by this contract to be carried by the Contractor on the Facilities, deliver to said Contracting Officer* a certificate of insurance or a certified copy of each renewal policy to cover the same risks. The insurance shall be in the name of the United States of America (Department of the Navy...), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

"Loss, if any, under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated for contract administration.

(d) Upon the happening of any loss or destruction of or any damage to the Facilities:

- (i) the Contractor shall promptly notify the Contracting Officer thereof, and with the assistance of the Contracting Officer shall take all reasonable steps to protect the Facilities from further damage, separate the damaged and undamaged Facilities, put all the Facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within thirty (30) days after the Contractor has determined that loss or destruction of, or damage to, the Facilities has occurred) a statement of:
 - (A) the lost, destroyed, and damaged Facilities;
 - (B) the time and origin of the loss, destruction, or damage;
 - (C) all known interests in commingled property of which the Facilities are a part; and
 - (D) the insurance, if any, covering any part of or interest in such commingled property, and
- (ii) the Contractor shall make such repairs, replacements, and renovations of the lost, destroyed, or damaged Facilities, or take such other action as the Contracting Officer may direct in writing.

The Contractor shall perform its obligations under this paragraph (d) at Government expense, except to the extent that the Contractor is responsible for such damage, loss, or destruction under the terms of this clause, and except as any damage, loss, or destruction is compensated by insurance.

(e) The Government is not obliged to replace or repair the Facilities which have been lost, destroyed, or damaged. In such event the right of the parties to an equitable adjustment in delivery or performance dates, or price, or both, and in any other contractual condition of the related procurement contracts affected thereby shall be governed by the terms and conditions of such contracts.

*In contracts of the Department of the Navy insert "the Insurance Branch, Chief of Naval Material, Department of the Navy, Washington, D. C." in lieu of "Contracting Officer."

(f) Except to the extent of any loss or destruction of or damage to the Facilities for which the Contractor is relieved of liability, the Facilities shall be returned to the Government or otherwise disposed of under the terms of this contract in as good condition as when received by the Contractor, as subsequently improved or as they should have been subsequently improved under the terms of this contract, less ordinary wear and tear

(g) In the event the Contractor is indemnified, reimbursed, or otherwise compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the Facilities, he, to the extent and as directed by the Contracting Officer

(i) shall use the proceeds to repair, renovate, or replace the Facilities involved; or

(ii) pay such proceeds to the Government.

(h) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the Facilities, and upon the request of the Contracting Officer shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the presentation of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

14. INDEMNIFICATION OF THE GOVERNMENT (1964 SEP)

The Contractor shall indemnify and hold the Government harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Facilities. However, the provisions of the Contractor's related procurement contracts shall govern the Government's assumption of liability for such claims arising out of or related to the performance of each such related procurement contract and involving the possession or use of the Facilities.

15. NOTICE OF USE OF THE FACILITIES (1968 JUN)

The Contractor shall notify the Contracting Officer in writing whenever:

(i) Use of all Facilities for Government work, in any quarterly period, is on an average less than 75% of the total use of the Facilities

(ii) Any item of the Facilities which is no longer needed or usable for purposes of performing existing Government contracts or subcontracts for which use has been authorized.

16. TERMINATION OF THE USE OF THE FACILITIES (1964 SEP)

(a) The Contractor may at any time, upon written notice to the Contracting Officer, terminate his authority to use any or all of the Facilities. Termination under this paragraph (a) shall not relieve the Contractor of any of his obligations or liabilities under any related procurement contract or subcontract affected thereby.

(b) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any or all of the Facilities. Except as otherwise provided in the "Failure to Perform" clause of this contract, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such notice.

17. PERIOD OF THIS CONTRACT (1964 SEP)

If not previously terminated pursuant to the "Termination of the Use of the Facilities" clause of this contract, the use of the Facilities authorized under this contract shall terminate five (5) years after its effective date. Thereafter, if continued use of the Facilities by the Contractor is mutually desired, the parties shall enter into a new contract which shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the Facilities hereunder beyond this five (5) year period to permit the completion of then existing related procurement contracts and subcontracts.

18. DISPOSITION OF THE FACILITIES (1968 APR)

(a) Except as the Contracting Officer otherwise directs, or until use of all the Facilities under this contract is terminated, the provisions of this clause shall not be applicable to those Facilities, the use of which has been terminated by the Contractor by a notice of termination under paragraph (a) of the "Termination of the Use of the Facilities" clause of this contract if:

- (i) such Facilities comprise less than all of the Facilities in the possession of the Contractor, and
- (ii) the Contracting Officer determines that continued retention of such Facilities would not interfere with the Contractor's operations.

(b) Within sixty (60) days after the effective date of any notice of termination given pursuant to the "Termination of the Use of the Facilities" clause of this contract, or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer, in form satisfactory to him, an accounting for all the Facilities covered by such notice.

(c) Within ninety (90) days after the Contractor accounts for any Facilities pursuant to paragraph (b) above, the Contracting Officer shall give written notice to the Contractor as to the disposition thereof, except as otherwise provided in paragraph (e) below. In effecting such disposition, the Government may either:

- (i) abandon any such Facilities in place, and thereupon all obligations of the Government regarding such abandoned Facilities and the restoration or rehabilitation of the premises in and on which they are located shall cease; or
- (ii) require the Contractor to comply, at Government expense, with such written directions as the Contracting Officer may give with respect to:
 - (A) the preparation, protection, removal, or shipment of the affected Facilities;
 - (B) the retention or storage of the affected Facilities, provided, that the Contracting Officer will not direct the Contractor to retain or store any items of Facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;
 - (C) the restoration of Government-owned land or buildings incident to the removal therefrom of Government-owned Facilities; and
 - (D) the sale of any affected Facilities in such manner, at such times, and at such price or prices, as may be approved by the Contracting Officer, except that the Contractor shall not be required to extend credit to any purchaser.

(d) If the Contracting Officer fails to give the written notice required by paragraph (c) above within the prescribed ninety (90) day period, or within thirty (30) days after notice as hereinafter provided, the Contractor may, upon not less than thirty (30) days' written notice to the Government and at Government risk and expense, (i) retain the Facilities in place or (ii) remove any of the affected severable Facilities located in Contractor-owned buildings or property and store them elsewhere, at Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification, if any. Except as provided in this paragraph, the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (c) above.

(e) Nonseverable items of the Facilities or items of the Facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(f) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any Facilities with respect to which the Contractor's authority to use has been terminated, other than those for which specific provision is made in paragraph (e) above.

(g) The Contractor shall, within a reasonable time after the expiration of the ninety (90) day period specified in paragraph (c) above, remove all property owned by him from land or buildings owned or acquired by the Government and take such action as the Contracting Officer may direct in writing with respect to restoring such land or buildings, insofar as they are affected by the installation therein of the Contractor's property, to their condition prior to such installation.

(h) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at Contractor's plant, except for restoration or rehabilitation costs caused by removal of the Facilities pursuant to paragraph (c)(ii) above. The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any such damage as may be occasioned by the negligence of the Government, its agents, or independent contractors.

19. FAILURE TO PERFORM (1964 SEP)

(a) If the Contractor shall fail to perform this contract in accordance with its terms, the Contracting Officer shall give the Contractor written notice thereof. Thereafter, notwithstanding any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related procurement contract, to the extent that such equitable adjustment arises out of the Contractor's failure to perform or such reasonable remedial action as may be taken by the Contracting Officer predicated upon such failure.

(b) The failure of the Government to insist, in any one or more instances, upon the performance of any term or terms of this contract shall not be construed as a waiver or relinquishment of the Government's right to future performance of such term or terms, and the Contractor's obligation in respect to such future performance shall continue in full force and effect.

(c) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

20. DISPUTES (1980 JUNE)

(a) This contract is subject to the Contract Disputes Act of 1978 (P.L. 95-563).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this clause.

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(c) (1) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or relating to this contract. However, a written demand by the Contractor seeking the payment of money in excess of \$50,000 is not a claim until certified in accordance with (d) below.

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim pursuant to the Act by complying with the submission and certification requirements of this clause.

(3) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for decision. A claim by the Government against the Contractor shall be subject to a decision by the Contracting Officer.

(d) For Contractor claims of more than \$50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims in excess of \$50,000, the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) Interest on the amount found due on a Contractor claim shall be paid from the date the Contracting Officer receives the claim, or from the date payment otherwise would be due, if such date is later, until the date of payment.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

21. MILITARY SECURITY REQUIREMENTS (1971 APR) ALT

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential," "Secret" or "Top Secret."

(b) The Contractor shall comply with (i) the Security Agreement (DD Form 441), including the attached Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M), and (ii) any revisions thereto, notice of which has been furnished to the Contractor

(c) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost, to the extent appropriate, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause in ASPR 7-702.4.

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(d) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding (c) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into may contain, in lieu of paragraph (c) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. (1973 APR)

22. OFFICIALS NOT TO BENEFIT (1949 JUL)

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

23. GRATUITIES (1952 MAR)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract, *provided*, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

24. COVENANT AGAINST CONTINGENT FEES (1958 JAN)

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

25. CONVICT LABOR (1975 OCT)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U S C 4082(c)(2)) and Executive Order 11755, December 29, 1973.

26. SUPERSEDURE (1964 SEP)

(a) Facilities heretofore provided to the Contractor pursuant to the contracts specified in the Schedule shall become subject to the terms of this contract upon its effective date. The terms of the contracts by which such Facilities may have been provided to the Contractor are hereby superseded with respect to such Facilities, except for rights and obligations which may have accrued under such other contract prior to the effective date hereof.

(b) Each item of Facilities hereafter provided to the Contractor under any contract which so specifies shall become subject to the terms of this contract upon the completion of its construction, acquisition, and installation, or upon its availability for use, whichever first occurs, except as otherwise provided in the contract or other document by which such Facilities are provided to the Contractor.

27. AUDIT BY DEPARTMENT OF DEFENSE (1975 JUN)

(a) *General* The Contracting Officer or his representatives shall have the audit and inspection rights described in the applicable paragraphs (b), (c) and (d) below.

(b) *Examination of Costs* The Contractor shall maintain, and the Contracting Officer and his representatives shall have the right to examine, books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly (1) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract and (2) the use of, and charges for the use of, the facilities. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

(c) *Cost or Pricing Data* If the Contractor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the United States Government shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Additionally, in the case of pricing any change or modification exceeding \$100,000 to formally advertised contracts, the Comptroller General of the United States or his representatives who are employees of the United States Government shall have such rights. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) *Reports* If the Contractor is required to furnish Contractor Cost Data Reports (CCDR), Contract Fund Status Reports (CFSR), or Cost Performance Reports (CPR) the Contracting Officer or his representatives shall have the right to examine books, records, other documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports, and (ii) the data reported.

(e) *Availability* The materials described in (b), (c) and (d) above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit, or reproduction until the expiration of three (3) years from the date of final payment under this contract or such lesser time specified in Appendix M of the Armed Services Procurement Regulation, and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.

(2) Records which relate to appeals under the "Disputes" clause of this contract, or litigation, or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation or claims have been disposed of.

(f) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (f), in all subcontracts exceeding \$10,000 hereunder except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the Government prime contract.

28. COMMERCIAL BILL OF LADING NOTATIONS (1969 DEC)

Prior to directing any shipment on a commercial bill of lading for which the Contractor will be reimbursed transportation costs as a direct allowable cost, the Contractor shall insure that the commercial shipping documents are annotated with either of the following notations, as appropriate:

- (i) when the Government is shown as the consignor or the consignee, the notation:
"Transportation hereunder is for the U.S. Department of Defense and the actual charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government."
- (ii) when the Government will not be shown as the consignor or the consignee, the notation:
"Transportation hereunder is for the U.S. Department of Defense, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government pursuant to cost-reimbursable contract No. This may be confirmed by contacting (name and address of in the contract administration office listed in the contract such as DCASR, Detroit, Michigan, 1580 E Grand Blvd, Detroit, Michigan 48211)."

29. IMPROVEMENTS TO BUILDING OR LAND OWNED BY THE GOVERNMENT (1964 SEP)

(a) The Contractor shall not construct or make, at its expense, any fixed improvement to, or structural alteration in the nature of, buildings or land owned or leased by the Government, without prior written approval of the Contracting Officer.

(b) For the purposes of paragraph (a), the terms "fixed improvement" and "structural alteration" mean any improvement to or alteration in the nature of the buildings or land which, after completion, cannot be removed without substantial loss of value or damage to the premises. Such terms do not include foundations for production equipment.

30. INTEREST (1972 MAY)

Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due until paid and shall be subject to adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation as in effect on the date of this contract. The interest rate per annum shall be the interest rate in effect which has been established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 for the Renegotiation Board, as of the date the amount becomes due as herein provided. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract, (ii) the date of the first written demand for payment, consistent with this contract, including demand consequent upon default termination, (iii) the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (iv) if this contract provides for revision of prices the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

31. FACILITIES EQUIPMENT MODERNIZATION (1976 JUL)

(a) In consideration of the Government providing, as set forth in this contract, for modernization or replacement of Government-owned equipment being used or to be used by the Contractor in the performance of Government firm-fixed-price contracts or subcontracts, or fixed-price contracts or subcontracts with economic price adjustment provisions, the Contractor agrees to return to the Government the net cost savings actually realized from the use of the modernized or replacement equipment on all such contracts or subcontracts entered into prior to the expiration of the three-year period following the date such equipment is placed in production, except (i) formally advertised contracts entered into subsequent to the date such equipment is placed in production, and (ii) contracts or subcontracts which specifically provide that they have been priced on the basis of anticipated use of such equipment.

(b)(1) The Contractor shall maintain adequate records for the implementation of this clause. The Contractor shall make such records available at its office for inspection, audit or reproduction by any authorized representative of the Contracting Officer. Within fourteen (14) months after the modernized or replacement equipment has been placed in production, the Contractor shall file with the Administrative Contracting Officer cognizant of the Government production and research property four (4) completed copies of DD Form 1651 (Industrial Equipment Modernization Program—Post Analysis Report).

(2) When the Contractor authorizes a subcontractor to use the modernized or replacement equipment, he shall require the subcontractor to maintain records, to make them and additional information available to the Contracting Officer, and to file four (4) copies of DD Form 1651, in the manner prescribed in (1) above.

(c) Records shall generally be acceptable if they are maintained for the equipment under established accounting practices and permit a fair estimation of the net cost savings realized. Net cost savings realized shall be determined by a comparison of the Contractor's cost experience in the operation of the equipment before and after modernization.

(d) Amounts due the Government under this clause shall be returned by the Contractor, as directed by the Administrative Contracting Officer by:

- (i) credits to, or adjustment of the prices of, the related contracts, subcontracts, or purchase orders benefiting from the use of the modernized or replacement equipment; or
- (ii) payment to the Government through the Contracting Officer having cognizance of the Government production and research property; or
- (iii) such other means as may be mutually agreed to.

32. CHANGE TO NAVAL SEA SYSTEMS COMMAND

Pursuant to a reorganization within the Department of Navy, effective 1974 Jul 01, the Naval Sea Systems Command has become the successor to the Naval Ordnance Systems Command with respect to the procurement covered by this contract. The Naval Ordnance Systems Command was the successor of the Bureau of Naval Weapons. Accordingly, as appropriate in view of the foregoing, each reference in this contract and in documents referenced therein to the Bureau of Naval Weapons or Naval Ordnance Systems Command shall be deemed to refer to the Naval Sea Systems Command.

33. ORDER OF PRECEDENCE

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the Specifications); (b) General Provisions; (c) the other provisions of the contract whether incorporated by reference or otherwise; and (d) the Specifications.

34. TAXATION (FACILITIES USE)

(a) The Contractor shall promptly notify the Contracting Officer of any taxes, assessments, or similar charges which may be imposed by any State or local taxing authority upon the Contractor with respect to the use or possession of the facilities or any part thereof and take such action as is directed in writing by the Contracting Officer to contest the validity of all or any portion of such taxes, assessments or similar charges or to secure a refund if they have been paid.

(b) If the Contractor is required to pay any State or local tax measured by his possession of or interest in the facilities hereunder while those facilities are being used for the performance of a procurement contract, he shall be reimbursed under the procurement contract to the extent provided therein; but if such tax measured by his possession or interest in the facilities during standby or lay-away is required to be paid, he shall be reimbursed therefor under this contract to the extent provided in DAR Section XV.

(c) The Contractor shall take such action as is directed by the Contracting Officer after notice is given as required above; but if no direction is made within sixty (60) days after such notice has been given, the Contractor may pay the tax in such a manner as to preserve his right to claim a refund and take such action as it deems advisable under the circumstances, notifying the Contracting Officer of that action in writing.

35. FAILURE OF THE GOVERNMENT TO INSIST ON COMPLIANCE

The failure of the Government to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this contract shall not be construed as a waiver or relinquishment of the Government's right to the future performance of any such term, covenant or condition, and the Contractor's obligation with respect to such future performance shall continue in full force and effect. The acceptance of rent by the Government hereunder shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor by reason of any breach of contract or default by the Contractor in the performance of any provisions of this contract, nor shall it invalidate any termination or notice of termination hereunder unless the Contracting Officer so agrees in writing.

36. NOTICES

No notice, order, direction, determination, requirement, consent or approval under this contract shall be of any effect unless in writing. All notices under this contract shall be forwarded by mail, postage prepaid. Notices to

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the Government shall be directed to the Issuing Office, Attention: Contracting Officer, at the address indicated on the Cover Sheet of this contract, or to such other address as the Government may hereafter from time to time specify in writing for such purpose. Notices to the Contractor shall be directed to the address appearing on the Cover Sheet of this contract or to such other address as the Contractor may hereafter from time to time specify in writing for such purpose.

37. EQUAL OPPORTUNITY (1978 SEP)

(If, during any twelve (12) month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded Federal contracts and/or subcontracts which have an aggregate value in excess of \$10,000, the Contractor shall comply with (1) through (7) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.)

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

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

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. *Provided*, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

38. ASSIGNMENT OF CLAIMS (1962 FEB)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret" or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

39. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (1976 MAY)

(a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the Contractor's noncompliance with the requirements of this clause, action for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

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40. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -- OVERTIME COMPENSATION
(1971 NOV)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, whichever is the greater number of overtime hours.

(b) *Violation, liability for unpaid wages, liquidated damages* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight (8) hours or in excess of his standard workweek of forty (40) hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages* The Contracting Officer may withhold from the Government Prime Contractor from any moneys payable on account of work performed by the Contractor or subcontractor such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years from the completion of the contract.

41. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA
(1976 JUL)

(a) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.

(b) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required. State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service but are not required to provide those reports set forth in paragraphs (d) and (e).

openings with the employment service system pursuant to this clause
rently with the use of any other recruitment source or effort and
tions which attach to the placing of a bona fide job order, including
veterans and nonveterans. The listing of employment openings does
particular job applicant or from any particular group of job appli-
tended to relieve the Contractor from any requirements in Execu-
ding nondiscrimination in employment.

paragraph (b) of this clause shall include, but not be limited to,
: filed at least quarterly with the appropriate local office or, where
one hiring location in a State, with the central office of that State
orts shall indicate for each hiring location (i) the number of in-
rting period, (ii) the number of nondisabled veterans of the Viet-
r of disabled veterans of the Vietnam era hired, and (iv) the total
red. The reports should include covered veterans hired for on-the-
787. The Contractor shall submit a report within thirty (30) days
period wherein any performance is made on this contract identify-
in. The Contractor shall maintain at each hiring location copies of
expiration of one year after final payment under the contract, dur-
nd related documentation shall be made available, upon request,
zed representatives of the Contracting Officer or of the Secretary
id include personnel records respecting job openings, recruitment

or becomes contractually bound to the listing provisions of this
yment service system in each State where it has establishments of
hiring location in the State. As long as the Contractor is contrac-
is and has so advised the State system, there is no need to advise
contracts. The Contractor may advise the State system when it is
t clause.

y to the listing of employment openings which occur and are filled
tinct of Columbia, Puerto Rico, Guam, and the Virgin Islands.
aphs (b), (c), (d) and (e) of this clause do not apply to openings
to fill from within his own organization or to fill pursuant to a
oyer-union hiring arrangement. This exclusion does not apply to a
loyer decides to consider applicants outside of his own organiza-
ment for that opening.

oyment openings" includes, but is not limited to, openings which
ing job categories: production and nonproduction, plant and of-
mechanics, supervisory and nonsupervisory, technical and execu-
, and professional openings as are compensated on a salary basis
0 per year. This term includes full-time employment, temporary
ire than three (3) days duration, and part-time employment. It
enings which the Contractor proposes to fill from within his own
ill pursuant to a customary and traditional employer-union hiring
penings in an educational institution which are restricted to stu-
ition. Under the most compelling circumstances an employment
s suitable for listing, including such situations where the needs of
innot reasonably be otherwise supplied, where listing would be
security or where the requirement of listing would otherwise not
est of the Government.

of the State employment service system" means the local office
e national system of public employment offices with assigned
rving the area where the employment opening is to be filled, in-
of Columbia, Guam, Puerto Rico, and the Virgin Islands.
he Contractor proposes to fill from within his own organization"
openings for which no consideration will be given to persons out-
r's organization (including any affiliates, subsidiaries, and the
and includes any openings which the Contractor proposes to fill
ished "recall" lists.

Contractor proposes to fill pursuant to a customary and tradi-
on hiring arrangement" means employment openings which the
to fill from union halls, which is part of the customary and tradi-
ship which exists between the Contractor and representatives of

(i) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act, hereinafter referred to as the "Act" (38 U.S.C. 2012).

(j) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the Contracting Officer. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

42. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (1975 JUN)

(a) This clause is applicable if the amount of this contract exceeds \$10,000 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding \$10,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above for records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

43. COMPETITION IN SUBCONTRACTING (1962 APR)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

44. PAYMENT FOR OVERTIME PREMIUMS (1967 JUN)

(a) Allowable cost shall not include any amount on account of overtime premiums except when (i) specified in (d) below or (ii) paid for work—

- (A) necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
- (B) by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
- (C) in the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or
- (D) which will result in lower overall cost to the Government.

(b) The cost of overtime premiums otherwise allowable under (a) above shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under this contract.

(c) Any request for overtime, in addition to any amount specified in (d) below, will be for all overtime which can be estimated with reasonable certainty shall be used for the remainder of the contract, and shall contain the following:

- (i) identification of the work unit, such as the department or section in which the requested overtime will be used, together with present workload, manning and other data of the affected unit, sufficient to permit an evaluation by the Contracting Officer of the necessity for the overtime;
- (ii) the effect that denial of the request will have on the delivery or performance schedule of the contract;
- (iii) reasons why the required work cannot be performed on the basis of utilizing multi-shift operations or by the employment of additional personnel, and
- (iv) the extent to which approval of overtime would affect the performance or payments in connection with any other Government contracts, together with any identification of such affected contracts.

(d) The Contractor is authorized to perform overtime, in addition to that performed under (a)(ii), to the extent that the overtime premium does not exceed *...Zero.

45. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (1970 JAN)

If any price, including profit or fee, negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because:

- (i) the Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;
- (ii) a subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;
- (iii) a subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or
- (iv) the Contractor or a subcontractor or prospective subcontractor furnished any data, not within (i), (ii) or (iii) above, which was not accurate as submitted,

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the price or cost shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, provided the actual subcontract price was not affected by defective cost or pricing data.

Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the contractor and the subcontractor, provided that they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

46. SUBCONTRACTOR COST OR PRICING DATA (1970 JAN)

(a) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed \$100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each subcontract hereunder which exceeds \$100,000 when entered into except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of \$100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000. The requirements of this clause shall be limited to such contract modifications.

(b) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to award of any subcontract, the amount of which is expected to exceed \$100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed \$100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds \$100,000 when entered into.

47. CLEAN AIR AND WATER (1975 OCT)

(Applicable only if the contract exceeds \$100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-3(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or the contract is not otherwise exempt.)

(a) The Contractor agrees as follows:

- (i) to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract;
- (ii) that no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing;
- (iii) to use his best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and
- (iv) to insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph (iv).

(b) The terms used in this clause have the following meanings.

(1) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(3) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-3(d)), an approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standard or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor, subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are colocated in one geographical area.

(7) The term "nonexempt contract or subcontract" means a contract or subcontract of more than \$100,000 which is not otherwise exempted pursuant to the EPA regulations implementing the Air Act and Water Act (40 CFR 15.5), as further implemented in ASPR 1-2302.4 or in FPR 1-1.2302-4 (whichever is applicable) and the procedures of the Department awarding the contract.

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FILED IN CLERK'S OFFICE
Salt Lake County, Utah

AUG 14 1987

H. Dixon Hanks, Clerk of District Court
By _____

IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

JOHN WAGNER ASSOCIATES,	:	
d/b/a GRABBER UTAH,	:	AFFIDAVIT OF KURT C. FAUX
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
HERCULES, INC., MODULAIRE	:	Civil No. C-86-404
INDUSTRIES, INC. and JOHN	:	
DOES I-X,	:	Judge Raymond S. Uno
	:	
Defendants.	:	

State of Utah)
 : ss.
County of Salt Lake)

Kurt C. Faux, being first duly sworn, deposes and states:

1. I have personal knowledge of the following facts.

2. On April 16, 1987, I visited the real property located at 4100 South 8400 West where the Office complexes are located that are the subject of the dispute between the above-entitled parties.

3. The purpose of said visitation was to inspect Annexes 15 and 16. Annex 9 was also inspected, though not part of this litigation.

4. Attached hereto as Exhibit 1 are photographs taken by

000405

affiant of various portions of the subject offices and real property.

5. The contents of these photographs are described below and referred to according to the number attached to the photograph:

(1) Joint of Office attachments in Annex 15, welding, overlap of roofing, overlap of wiring.

(2) This photograph shows the northern side of Annex 15 viewed from the East. This photograph shows the concrete sidewalk. The concrete stairs ascending from the North parking lot shows the attached steel railings. Also shown are the rain gutters, the air conditioning units, the overlapping nature of the exterior siding, the Office skirting and the Office stairways.

(3) This photograph shows a portion of South parking viewed area from the East side of Annex 9. In the background are portions of Annexes 15 and 16. A drain for the parking area is also in view.

(4) Bottom portion of Office power unit.

(5) Rain gutter of Annex 15 with concrete buffer.

(6) Office power unit.

(7) This photograph shows the northern side of Annex 15 viewed from the East. This photograph shows the concrete sidewalk. The concrete stairs ascending from the North parking lot shows the attached steel railings. Also shown are the rain gutters, the air conditioning units, the overlapping nature of the exterior siding, the Office skirting and the Office

stairways. In bottom right hand corner of the photograph is a car parked on a portion of the northern parking lot along with light pole to provide lighting for the parking lot.

(8) This photograph shows a portion of concrete sidewalk abutting Office skirting.

(9) This photograph show a portion of parking lot North of Annex 9. Although not part of litigation, this photograph also shows concrete sidewalks and concrete stairs with steel railings.

(10) This photograph also shows concrete sidewalks and concrete stairs with steel railings pertaining to Annex 9.

(11) Stairwell leading from parking lot North of Annex 9.

(12) Utility fixtures of Annex 15.

(13) Power units of Annex 16.

(14) Interior hallway of Annex 16, showing the terraced nature of the roof and stairway, overlapping nature of finish work viewed from the North.

(15) Lengthy corridor of Annex 15 viewed from the East.

(16) Interior hallway of Annex 16, showing the terraced nature of the roof and stairways, overlapping nature of finish work viewed from the South.

(17) West view of pipe spanning gap underneath suspended walkway of Annex 15.

(18) West view of suspended walkway of Annex 15 joining additional Offices.

(19) East view of suspended walkway. View of South side of Annex 15 with asphalt of parking lot extending halfway up the skirting.

(20) Close up view of the suspended walkway joint.

(21) South view of Annex 15 showing asphalt and concrete walkway abutting the grooved Office skirting.

(22) Same as photograph (21).

(23) Same as photograph (21) and (23).

(24) East view of Annex 16 showing the paving abutting the grooved Office skirting of the terraced Offices.

(25) East view of Annex 16 showing the paving abutting the grooved Office skirting of the terraced Offices.

(26) East view of Annex 16 showing the paving abutting the grooved Office skirting of the terraced Offices.

(27) North view of Annex 15 showing attachment of stairwells.

(28) Cinder block foundation resting on concrete pads supporting the Office.

DATED this 27th day of July, 1987.

Kurt C. Faux

Kurt C. Faux

SUBSCRIBED AND SWORN to me this 27th day of July, 1987.

Joanne B. Tillmore

Notary Public Residing at

Salt Lake County, Utah

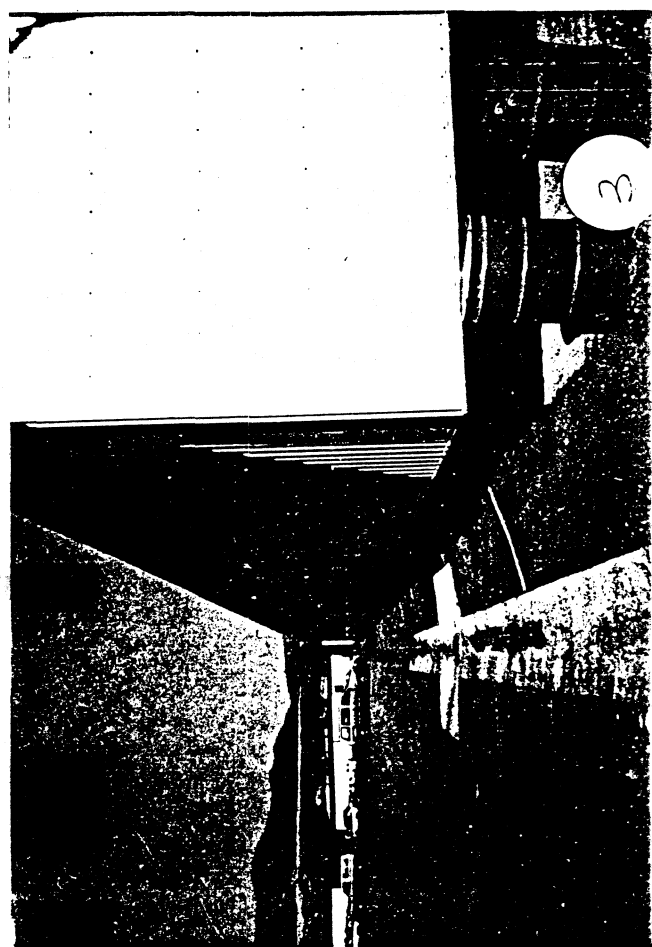
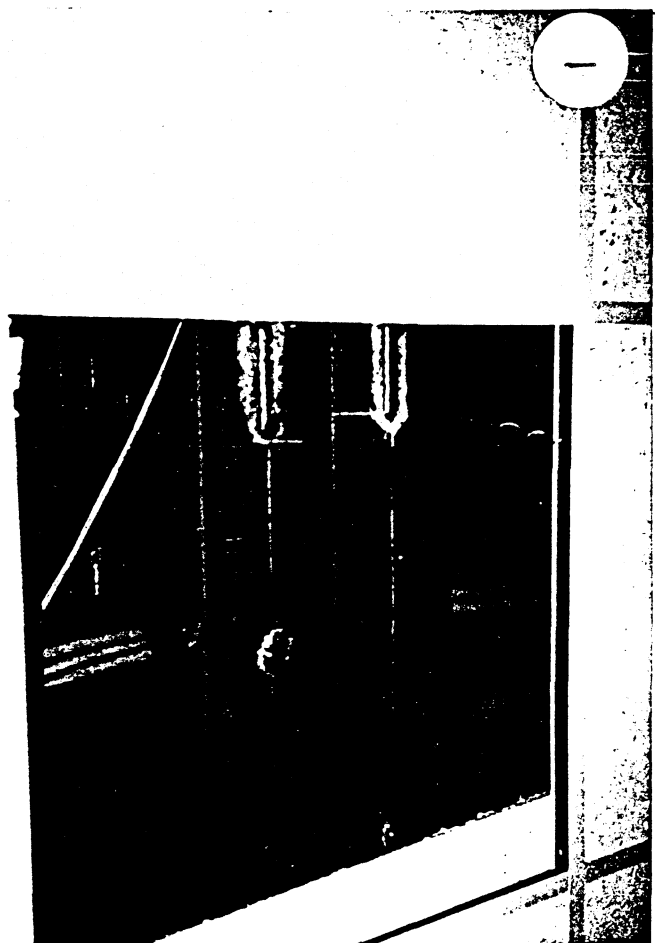
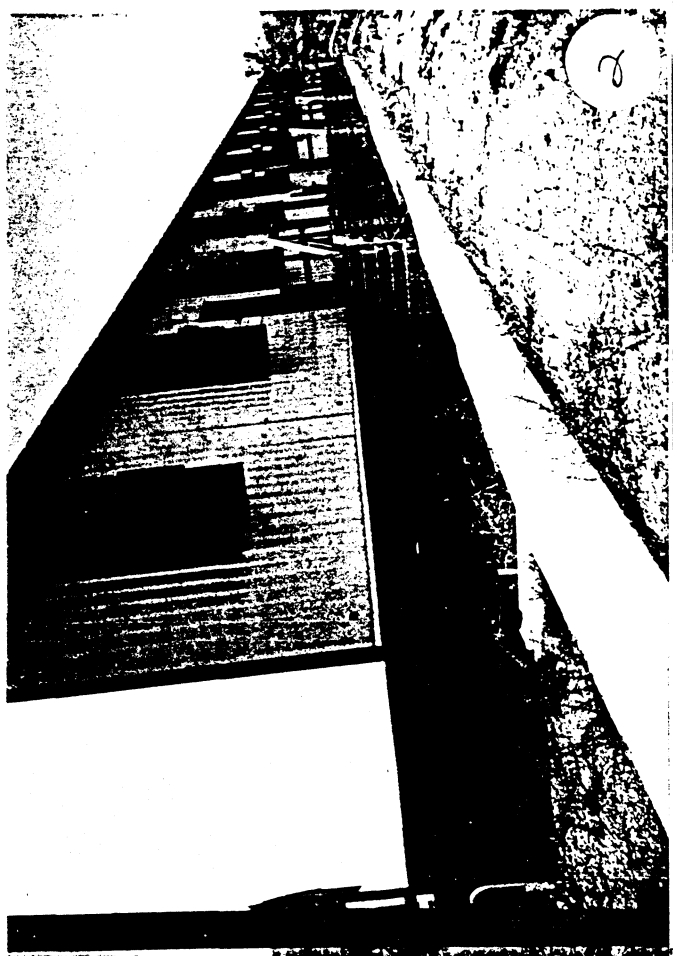
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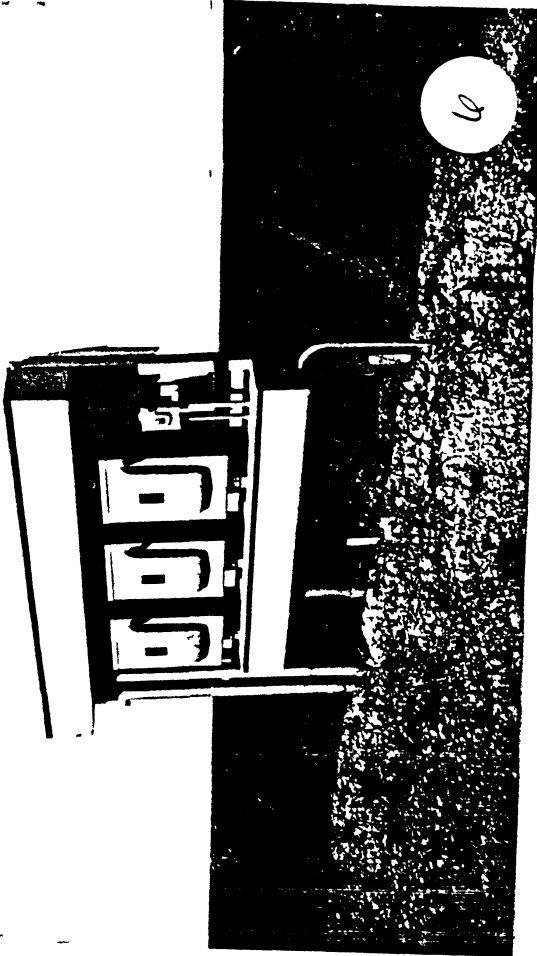
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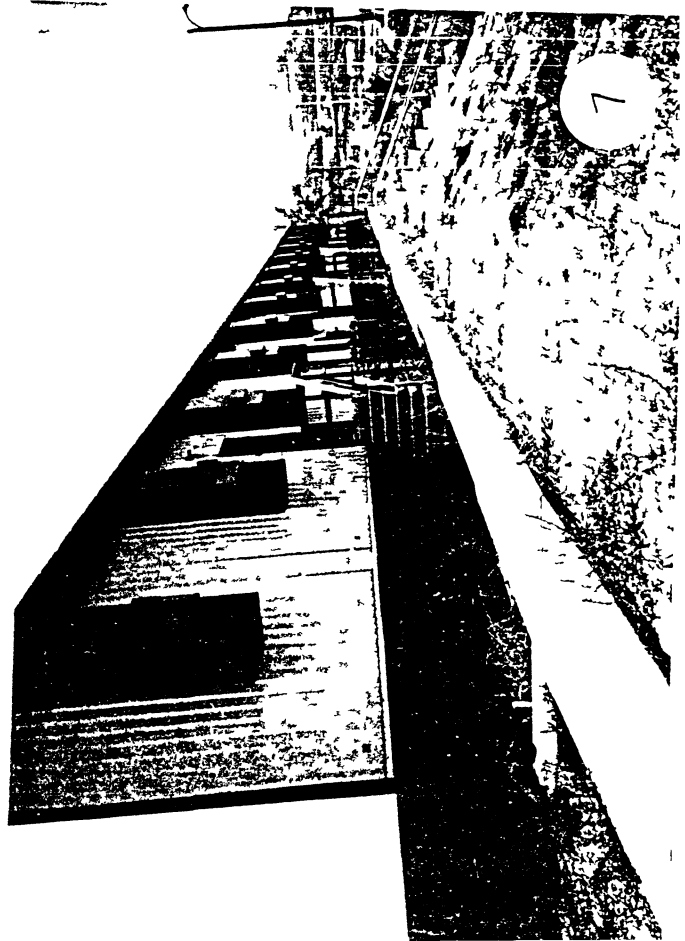




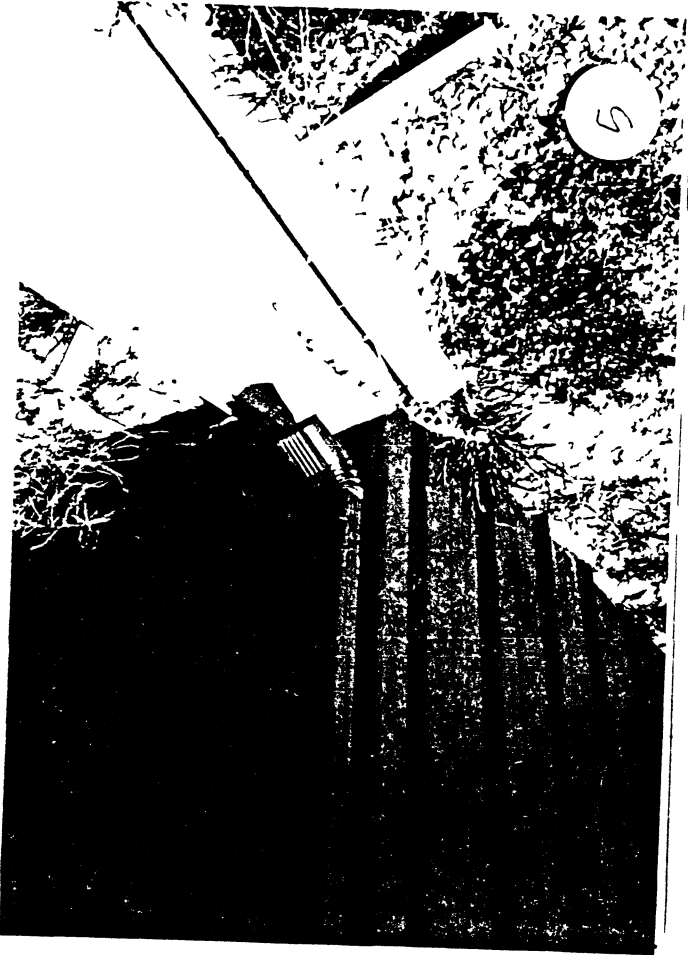
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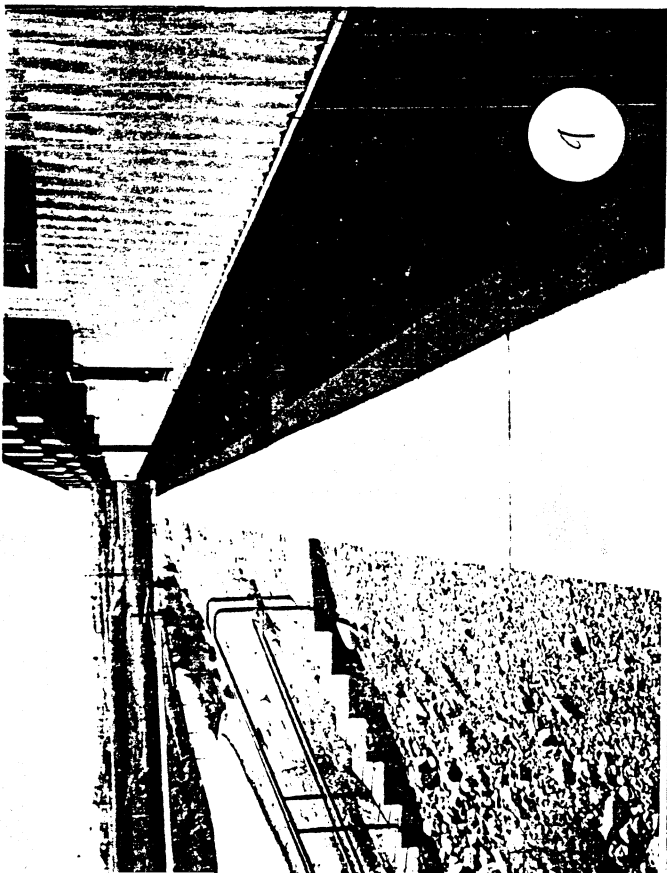
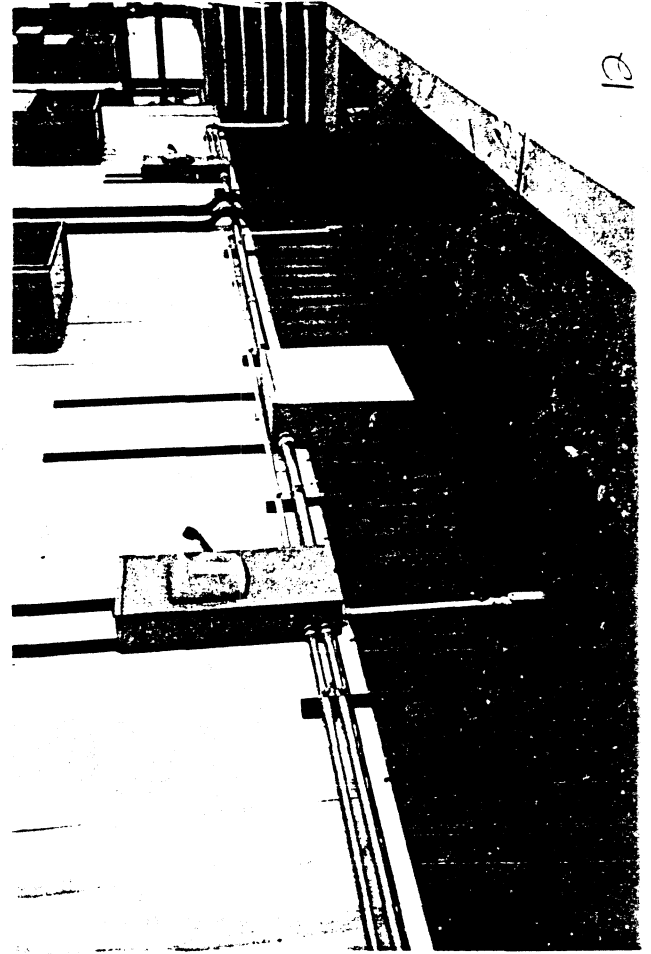
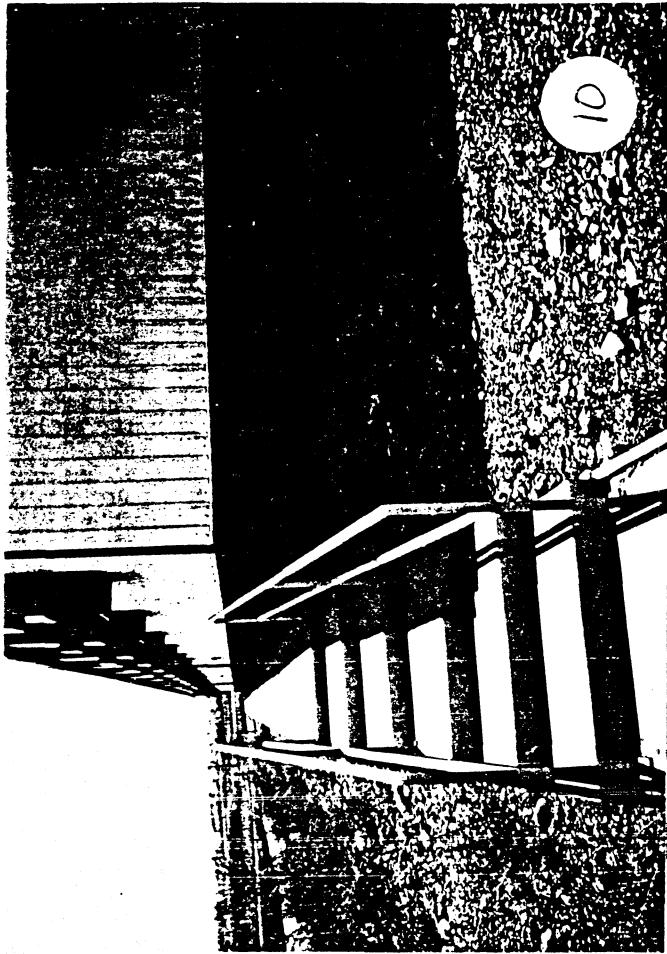
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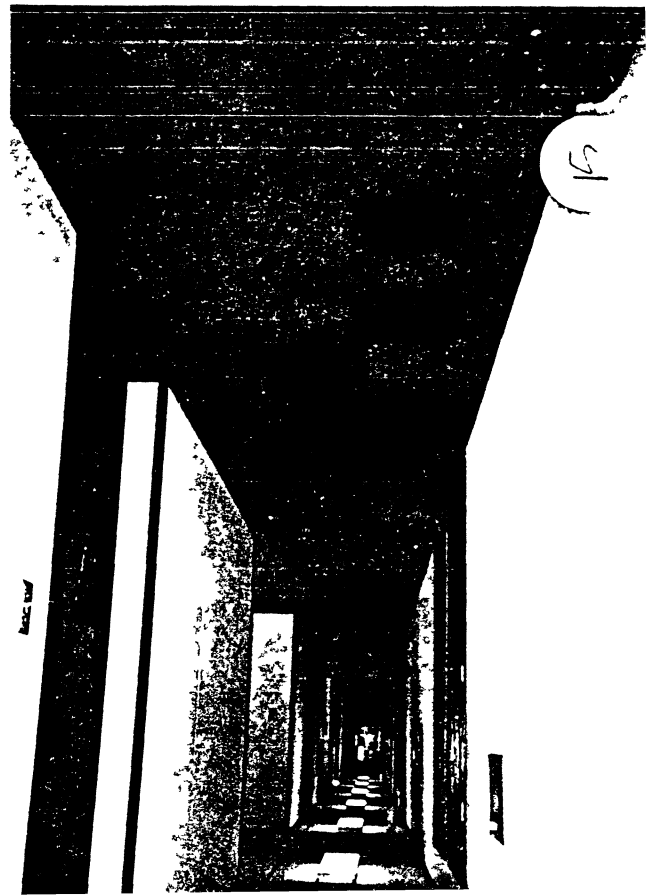
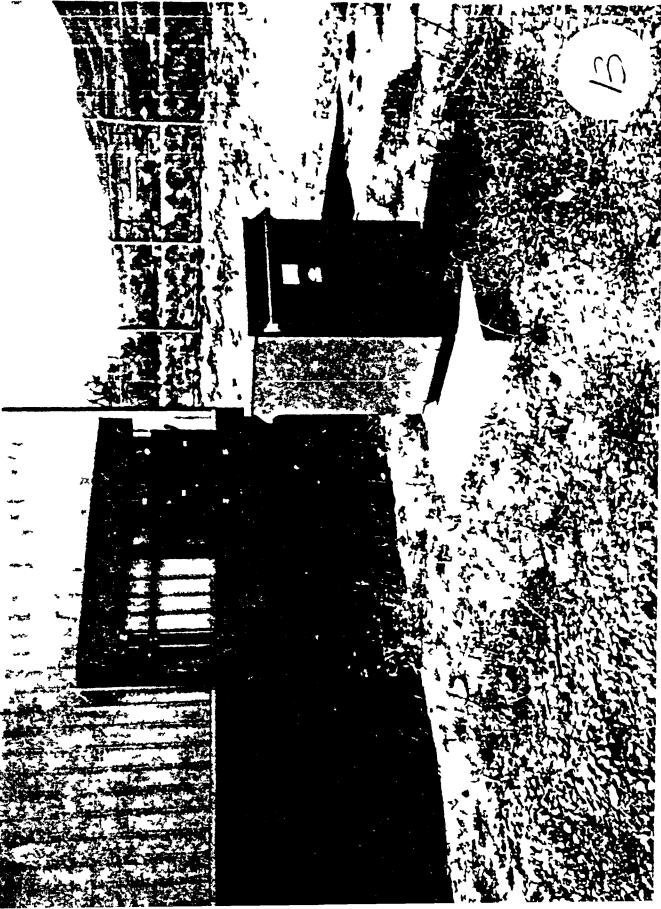
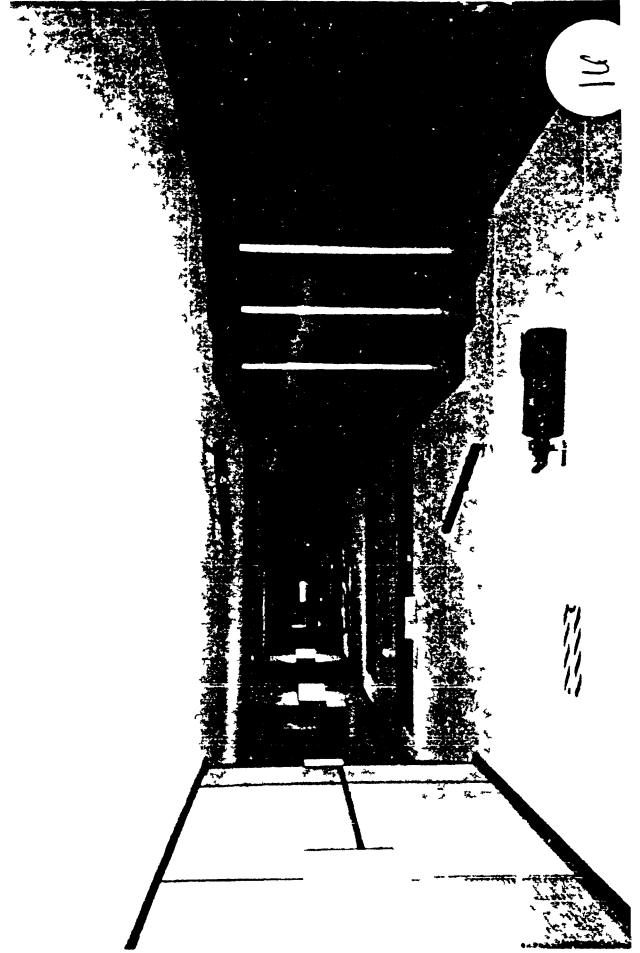
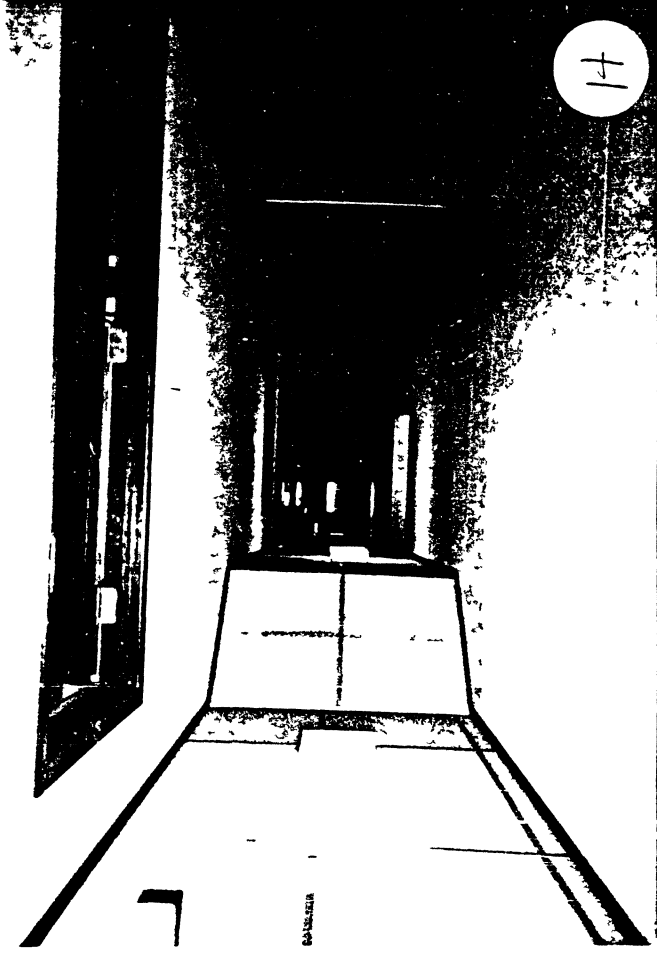


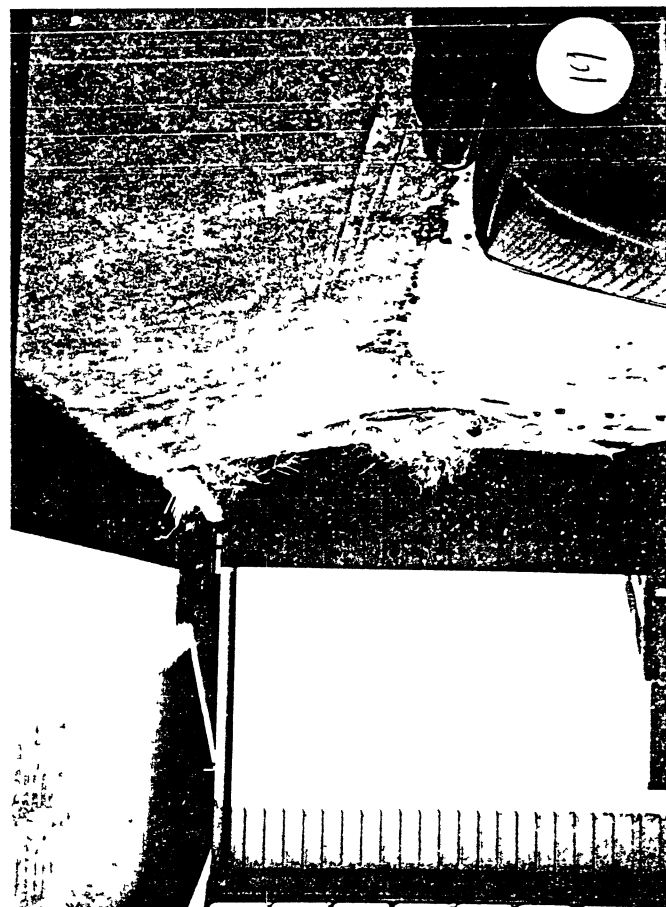
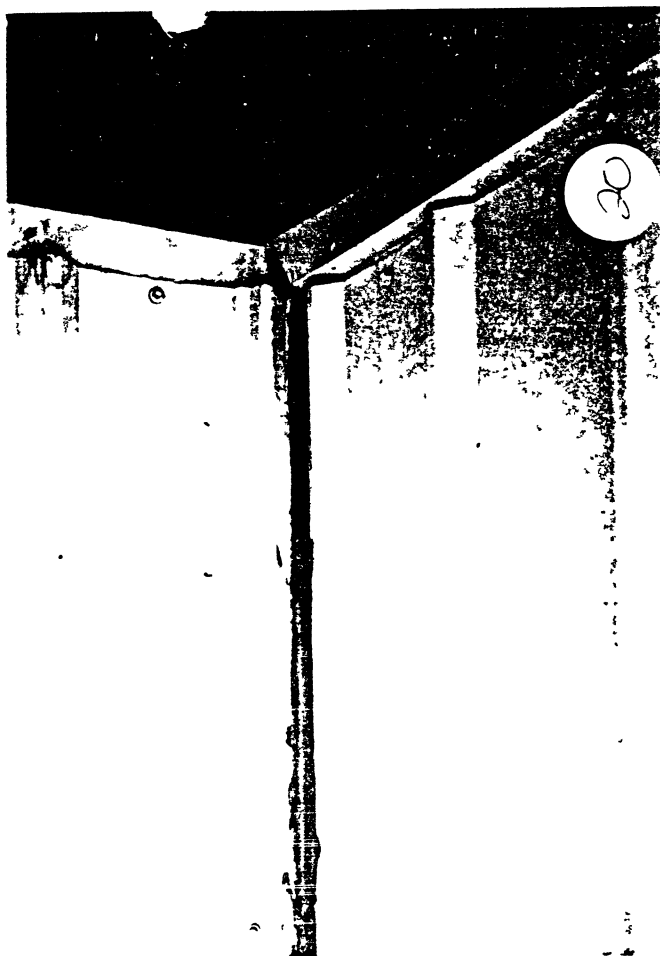
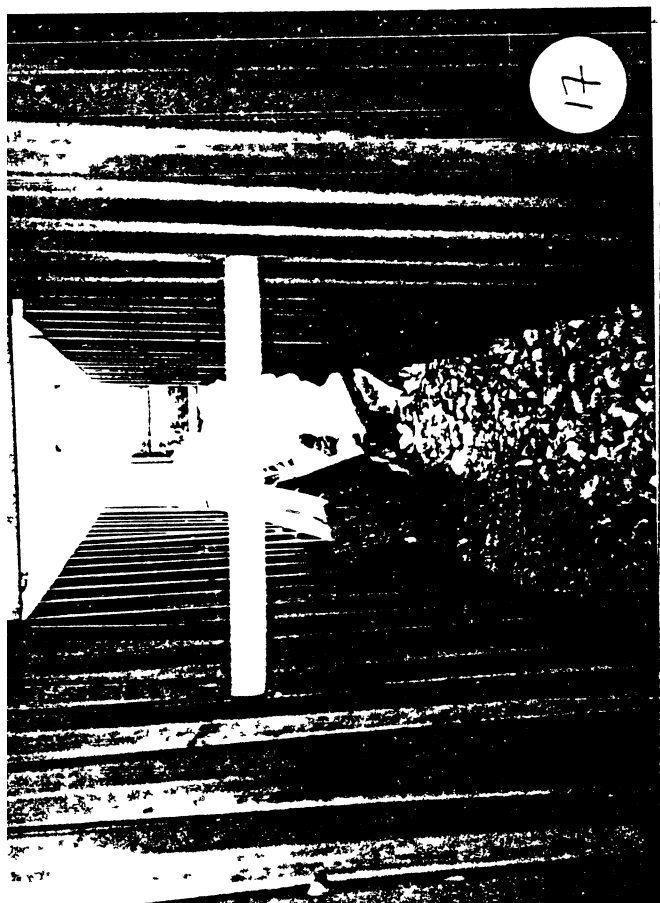
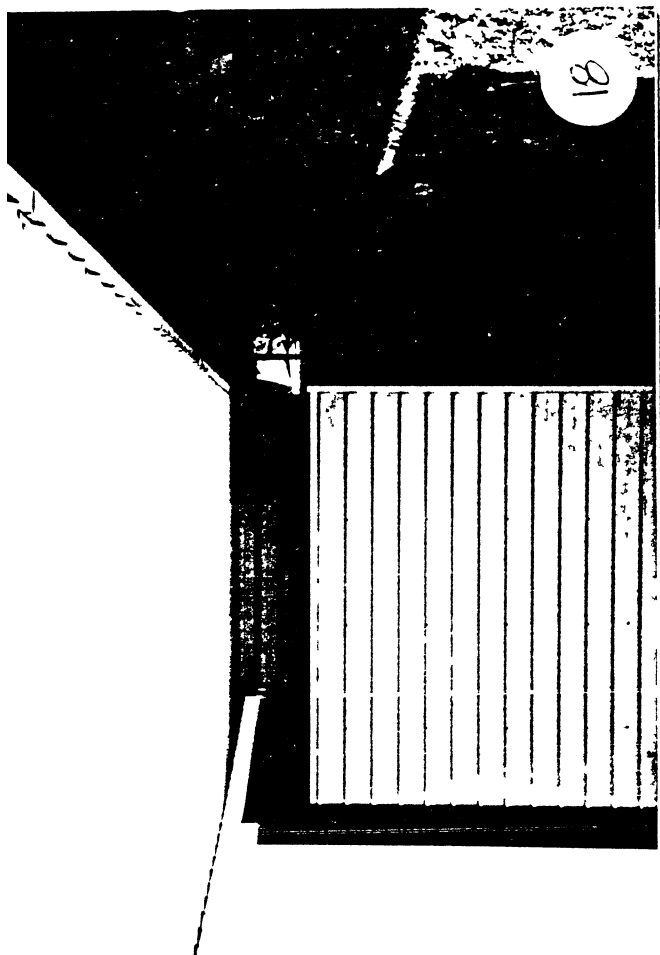
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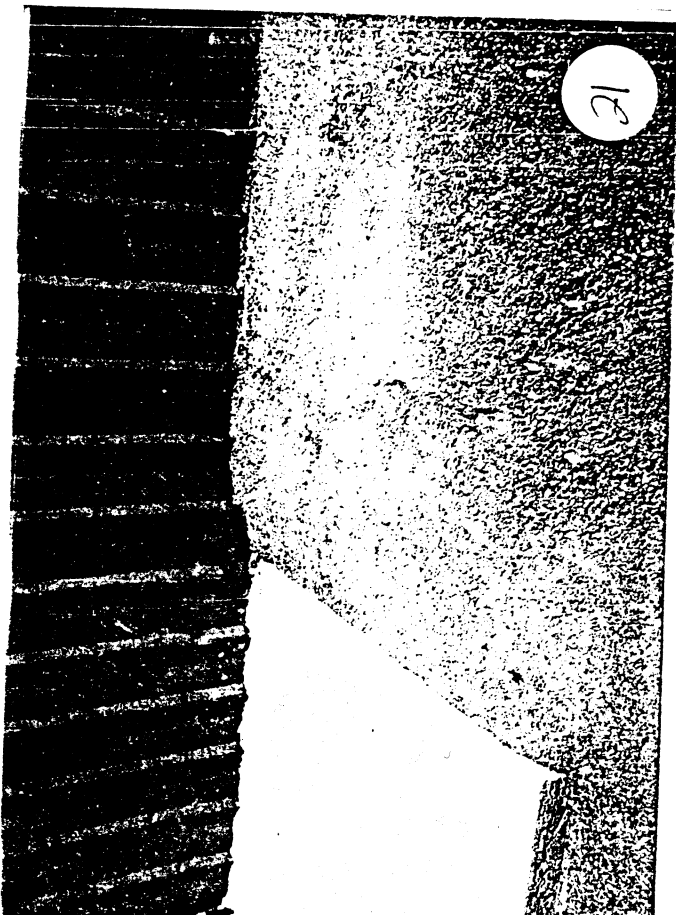
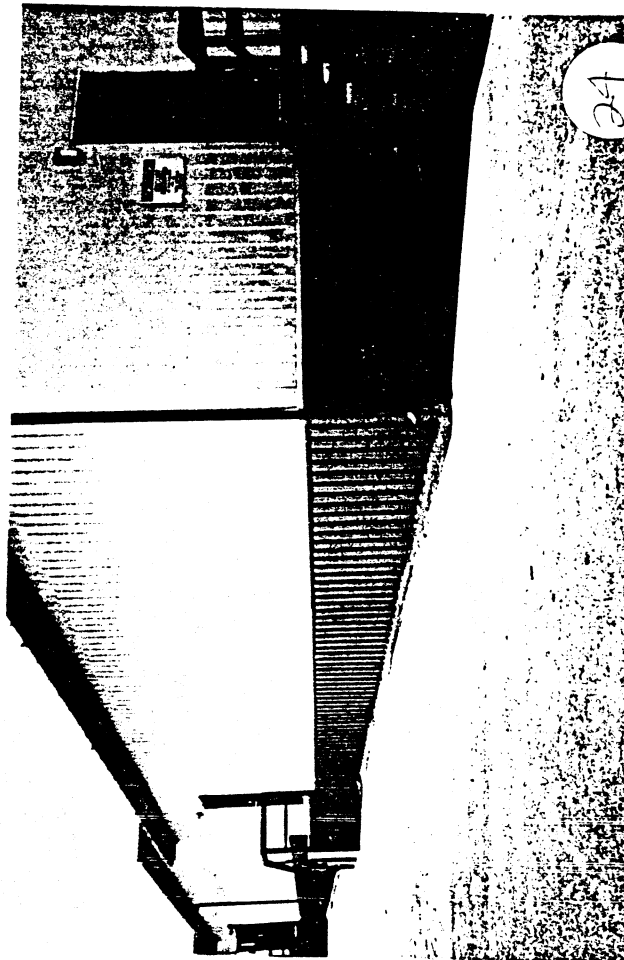


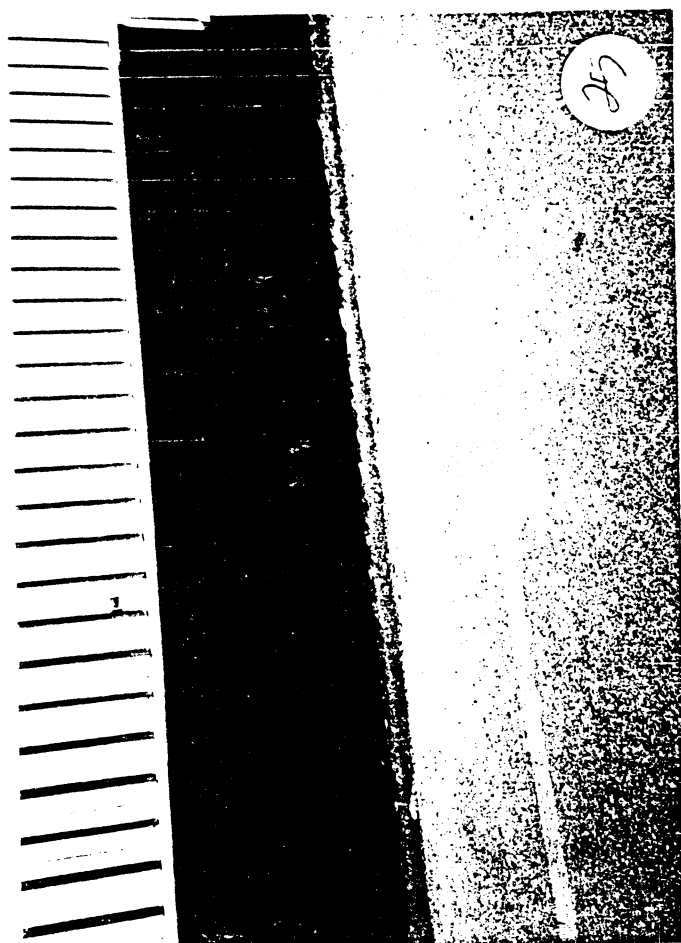
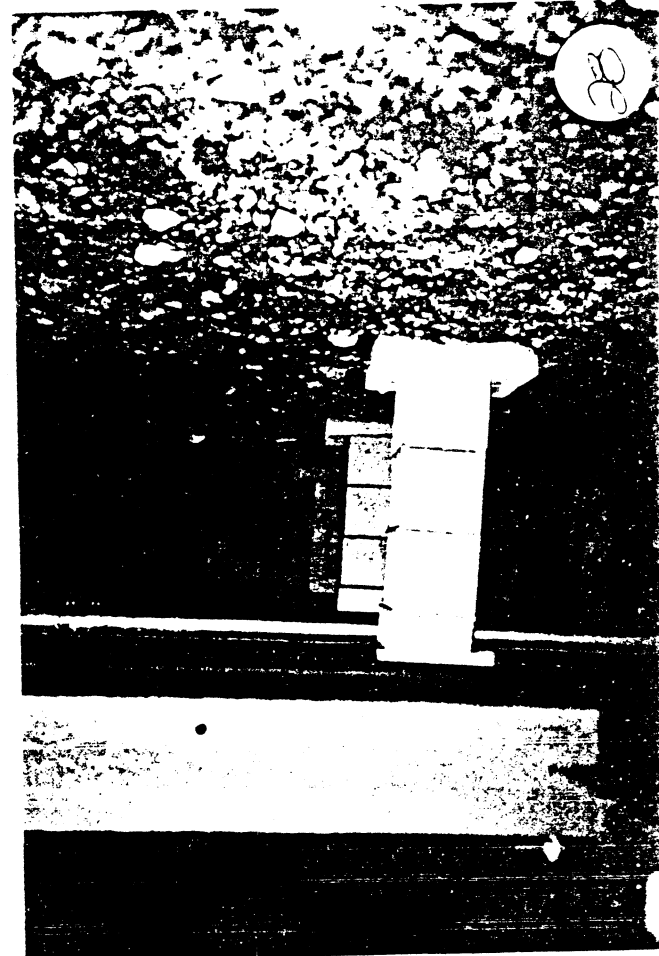
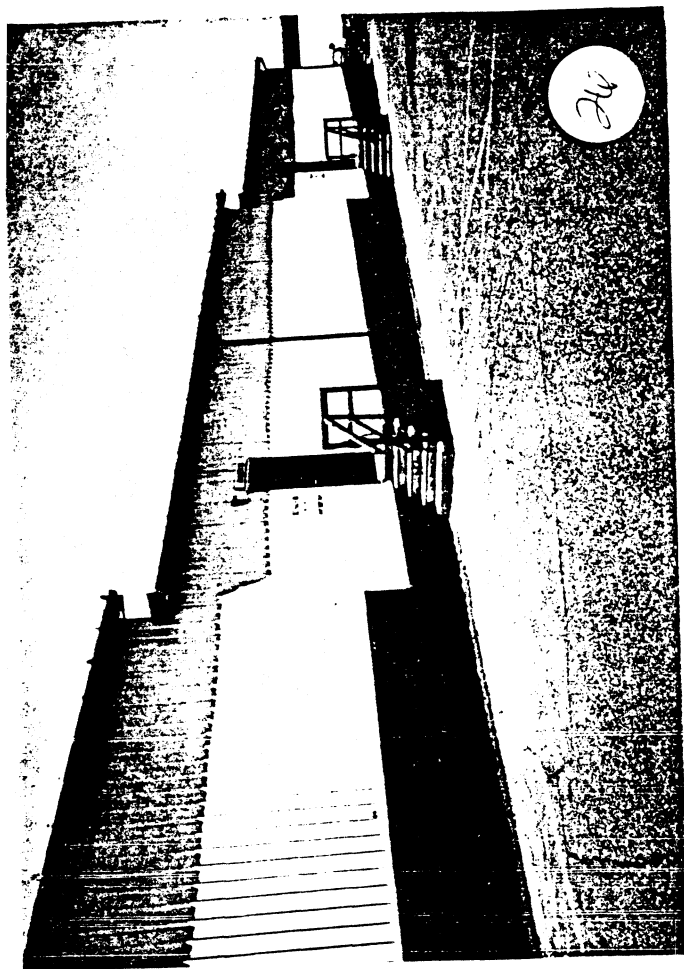
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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

JOHN WAGNER ASSOCIATES,
d/b/a GRABBER UTAH,

PLAINTIFF,

VS

HERCULES, INC., MODULAIRE
INDUSTRIES, INC., AND JOHN
DOES I-X,

DEFENDANTS.

CASE NO. C-86-404

TRIAL TRANSCRIPT

DATE: TUESDAY, JULY 12, 1988, 10:00 a.m.

BEFORE: THE HONORABLE FRANK G. NOEL

REPORTED BY: CREED H. BARKER, CSR

APPEARANCES

FOR THE PLAINTIFF: DARREL J. BOSTWICK
WALSTAD & BABCOCK
185 SOUTH STATE, SUITE 1000
SALT LAKE CITY, UTAH 84111

FOR THE DEFENDANT: JAMES ELEGANTE
PARSON, BEHLE & LATIMER
185 SOUTH STAE, SUITE 700
SALT LAKE CITY, UTAH 84147-0898

FILED IN CLERK'S OFFICE
Salt Lake County Utah

NOV 16 1988

H. Dixon Hindley, Clerk 3rd Dist. Court
By *William Barker*
Deputy Clerk

600640

1 ORIGINAL?

2 THE COURT: I DON'T RECALL WHETHER I DID OR
3 NOT. I'LL HAVE TO LOOK IN THE FILE. I'LL CHECK THE FILE
4 AT A BREAK AND SEE IF I HAVE IT.

5 MR. BOSWICK, YOU MAY PROCEED.

6 MR. BOSWICK: IF I MAY, THERE'S JUST ONE OR TWO
7 OTHER ITEMS WITH REGARD TO FACTS THAT HAVE BEEN ADMITTED OR
8 STIPULATED TO.

9 THE FACT THAT THERE WAS NOT A BOND OBTAINED AS
10 ADMITTED IN THE ANSWER, COUNSEL AND I HAVE AGREED TO
11 STIPULATE TO THE CONTRACTUAL RELATIONSHIP, HERCULES BEING
12 AT THE TOP OF A CONTRACT TRAIN, MODULAIRE BEING THE SECOND,
13 SPACE BUILDING SYSTEMS BEING THIRD. AND SPACE BUILDING
14 SYSTEMS, IF YOU'LL RECALL, HAS FILED BANKRUPTCY. AND THEN
15 GRABBER UTAH, PLAINTIFF HERE INVOLVED IN THE CHAIN.

16 BUT I ALSO BELIEVE THERE'S AN ADMISSION IN THE
17 ANSWER THAT THESE OFFICE UNITS ARE SITUATED ON THE SUBJECT
18 PROPERTY. I DON'T WANT TO WASTE THE COURT'S TIME IN
19 BRINGING THOSE FACTS OUT. I BELIEVE THAT'S WHAT HE SPOKE
20 OF EARLIER AND REPRESENTS THE STIPULATION.

21 MR. ELEGANTE: I'M NOT SURE WE REACHED ANY
22 AGREEMENT ABOUT WHERE THESE MODULAIR UNITS ARE LOCATED.
23 AND I INTEND TO PRESENT TO YOUR HONOR, THROUGH A WITNESS, A
24 PLAN OF THE HERCULES WORKS. AND THAT PLAN WILL LOCATE
25 THROUGH THAT TESTIMONY WILL LOCATE THESE THINGS.

1 Q. -- WAS IN PROCESS.

2 DID GRABBER UTAH MAINTAIN AN ACCOUNT FOR SPACE
3 BUILDING SYSTEMS WHEREBY SPACE BUILDING SYSTEMS COULD
4 PURCHASE GOODS ON CREDIT?

5 A. YES, WE DID.

6 Q. DID YOU KEEP THAT BY PROJECT ACCOUNT IN THAT
7 SPACE BUILDING SYSTEMS WOULD PERFORM WORK ON
8 VARIOUS --

9 MR. ELEGANTE: I OBJECT, THE QUESTION IS
10 LEADING.

11 THE COURT: JUST A MOMENT. THERE'S BEEN AN
12 OBJECTION. I'LL SUSTAIN THE OBJECTION.

13 Q. (BY MR. BOSWICK) DID YOU KEEP THE ACCOUNT BY
14 PROJECT?

15 A. YES, WE DID.

16 Q. DURING THAT TIME, WAS THERE A PROJECT ACCOUNT
17 KEPT FOR A SPACE BUILDING PROJECT AT HERCULES?

18 A. YES, THERE WAS.

19 Q. HAVE YOU REVIEWED THE ACCOUNTING RECORDS WITH
20 REGARD TO THE HERCULES PROJECT FOR SPACE BUILDING SYSTEMS?

21 A. MANY TIMES.

22 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS
23 PLAINTIFF'S EXHIBIT #65, AND ASK THAT YOU IDENTIFY THE
24 EXHIBIT FOR THE COURT?

25 A. THESE ARE ALL INVOICES BILLED TO SPACE BUILDING

1 SYSTEMS FOR THE HERCULES PROJECT. I'VE LOOKED AT THESE
2 ALREADY, BUT I CAN GO THROUGH THEM AGAIN AND LOOK AT THEM
3 AGAIN. BUT THEY'RE ALL CORRECT.

4 Q. DOES THAT REPRESENT ALL OF THE INVOICES ON THE
5 HERCULES PROJECT FOR SPACE BUILDING SYSTEMS?

6 A. YES.

7 Q. AND THE FIRST PAGE TO THE EXHIBIT, WOULD THAT
8 BE SIMPLY A RECAP OF THE INVOICES?

9 A. THAT'S RIGHT, WITH THE DATE OF THE INVOICE, THE
10 INVOICE NUMBER AND THE AMOUNT.

11 Q. WITH REGARD TO THE SPACE BUILDING SYSTEMS
12 HERCULES ACCOUNT, DID GRABBER UTAH EVER RECEIVE ANY PAYMENT
13 FOR THE MATERIALS PURCHASED?

14 A. NO.

15 Q. MR. SPENCER, ARE YOU FAMILIAR WITH THE PRICES
16 AND DEALINGS OF COMPANIES OF YOUR TYPE IN THE INDUSTRY?

17 A. YES, I AM.

18 Q. WOULD THE AMOUNTS REPRESENTED BY THE INVOICES
19 IN YOUR OPINION, REPRESENT REASONABLE AND CUSTOMARY CHARGES
20 FOR THE MATERIALS FURNISHED?

21 A. VERY MUCH SO. IN FACT A JOB LIKE THAT IS BID,
22 AND SO ORDINARILY IT'S THE LOW BIDDER THAT GETS THE JOB.

23 Q. DO YOU RECALL WHETHER THIS PROJECT WAS IN FACT
24 BID?

25 A. ACCORDING TO THE PRESIDENT OF SPACE BUILDING

1 SYSTEMS, WE WERE COMPETING AGAINST SEVERAL PEOPLE IN THE
2 VALLEY ON THIS PROJECT. SO WE CAME IN WITH OUR NUMBERS AND
3 THEY WERE GOOD. SO WE GOT THE JOB.

4 MR. BOSWICK: YOUR HONOR, IF I COULD JUST BREAK
5 FOR A MOMENT WITH QUESTIONING AND MAKE A COMMENT. THERE'S
6 BEEN AN OFFER OF JUDGMENT AND ACCEPTANCE OF AN OFFER OF
7 JUDGMENT FROM MODULAIRE IN THE SUM OF \$5,000 THAT HAS NOT
8 BEEN PAID TO DATE. IN ADDITION, THERE ARE -- THAT OFFER OF
9 JUDGMENT INCLUDED COSTS TO DATE. SINCE GRABBER UTAH HAS
10 HAD TWO SEPARATE COUNSEL IN THIS MATTER, I'VE HAD SOME
11 DIFFICULTY IN OBTAINING THE ACCOUNTING RECORDS FROM THE
12 PREVIOUS ATTORNEY. SO I DON'T KNOW HOW MUCH -- IF AND WHEN
13 THE \$5,000 IS GOING TO BE PAID. WE DO NOT KNOW HOW MUCH OF
14 THAT WILL BE TAKEN UP BY COSTS AND APPLIED TO PRINCIPAL.
15 SO AT THIS POINT IN TIME HAVING NOT BEEN PAID, WE ARE STILL
16 SEEKING THE SUM OF \$14,303.03.

17 AND THE AMOUNT WILL BE ADJUSTED ACCORDINGLY
18 WHEN THAT PAYMENT IS MADE. I HAVE NO FURTHER QUESTIONS AT
19 THIS TIME OF THE WITNESS.

20 THE COURT: ALL RIGHT.

21 MR. ELEGANTE?

22 CROSS-EXAMINATION

23 BY MR. ELEGANTE:

24 Q. MR. SPENCER, LOOKING AT PAGE 2, OR I SUPPOSE
25 IT'S PAGE 3 OF 65. CAN YOU TELL ME THE COST TO JOHN WAGNER

REDIRECT-EXAMINATION

BY MR. BOSWICK:

Q. MR. SPENCER, IS THERE ANYTHING PARTICULAR ABOUT THE MATERIALS THAT IS PRESENTED IN PLAINTIFF'S EXHIBIT 65 WHICH WOULD MAKE THEM UNIQUE?

A. THERE IS. IF YOU GO THROUGH ALL OF THESE INVOICES, THE STUD AND TRACK ARE ALL ONE SIZE, TWO AND A HALF INCH.

Q. WHAT MAKES THAT UNIQUE?

A. THAT'S UNIQUE BECAUSE THEY'RE USED SPECIFICALLY FOR DEMOUNTABLE WALLS AND THE TYPES WE USE IN THE TRAILER HOUSES.

Q. SO TO CLARIFY THEN --

A. TO CLARIFY, THAT WOULD BE THE ONLY TYPE OF STUDS GENERALLY SPEAKING THAT A PROJECT LIKE THAT WOULD ORDER, TWO AND A HALF INCH.

Q. WHAT WOULD BE THE STANDARD IN CONSTRUCTION?

A. THREE AND FIVE-EIGHTHS.

Q. HAVE YOU HAD AN OPPORTUNITY TO RUN ANY CALCULATIONS WITH REGARD TO AMOUNTS OF MATERIALS IN RELATION TO THIS PROJECT?

A. GOING THROUGH THE INVOICES THE CEILING TILE, THE SQUARE FOOT AREA FOR THE CEILING IS APPROXIMATELY -- WHEN YOU ADD UP ALL THE WIDTHS AND LENGTHS OF THE DIFFERENT

1 TRAILER HOUSES TOGETHER, IS APPROXIMATELY 25,200 SQUARE
2 FEET. AND THE AMOUNT OF CEILING TILE THAT WE DELIVERED TO
3 THAT PROJECT WAS \$18,112.00.

4 MR. BOSWICK: NO FURTHER QUESTIONS AT THIS
5 TIME.

6 THE COURT: MR. ELEGANTE?

7 MR. ELEGANTE: MAY I HAVE JUST A MOMENT, YOUR
8 HONOR?

9 I HAVE NO QUESTIONS, THANK YOU, YOUR HONOR.

10 THE COURT: YOU MAY STEP DOWN. ANY OTHER
11 WITNESSES, MR. BOSWICK?

12 MR. BOSWICK: YES, I WOULD LIKE TO CALL RYDER
13 WARING.

14
15 RYDER CHRISTIAN WARING

16 CALLED AS A WITNESS HEREIN, HAVING BEEN DULY
17 SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

18
19 DIRECT EXAMINATION

20 BY MR. BOSWICK:

21 Q. PLEASE STATE YOUR NAME FOR THE RECORD.

22 A. RYDER CHRISTIAN WARING.

23 Q. AND YOUR ADDRESS?

24 A. 1918 SEVRIN DRIVE; SALT LAKE CITY, UTAH.

25 Q. MR. WARING, ARE YOU CURRENTLY EMPLOYED?

1 Q. DO YOU KNOW HOW MUCH WAS EXPENDED IN PREPARING
2 THIS SITE?

3 A. I'M NOT CERTAIN. I DO NOT KNOW. THAT WAS NOT
4 HANDLED BY ME, IT WAS HANDLED BY ANOTHER BUYER AND
5 PURCHASER.

6 Q. WITH RESPECT TO THE UTILITIES, WOULD THE
7 \$419,266.00 INCLUDE UTILITY WORK?

8 A. NO, IT ONLY INCLUDED THE TEMPORARY TRAILERS.

9 Q. DO YOU KNOW HOW MUCH WAS EXPENDED IN PROVIDING
10 UTILITIES TO THESE COMPLEXES?

11 A. NO, I DO NOT KNOW.

12 Q. CAN YOU TELL ME WHAT THE PURPOSE FOR THE TWO
13 YEAR LEASE PERIOD WAS?

14 A. THE PURPOSE? WE NEEDED ADDITIONAL SPACE FOR
15 EMPLOYEES. WE HAD RUN OUT OF SPACE.

16 Q. WHY TWO YEARS?

17 A. AT THAT TIME THAT WAS THE MAXIMUM TIME THAT WE
18 COULD LEASE ANY EQUIPMENT, TRAILERS, VEHICLES, ANYTHING
19 THAT HAD TO DO WITHIN LEASING. WE WERE LIMITED TO TWO
20 YEARS. THAT WAS A HERCULES INTERNAL POLICY.

21 Q. DID THE TWO YEARS HAVE ANYTHING TO DO WITH HOW
22 LONG YOU INTENDED TO KEEP THE EMPLOYEES HOUSED IN THESE
23 PARTICULAR UNITS?

24 A. USUALLY NOT NECESSARILY, BECAUSE DIFFERENT
25 GROUPS HAVE TRANSFERRED FROM ONE LOCATION TO ANOTHER

1 LOCATION. OFTENTIMES PEOPLE WILL STAY IN THE SAME COMPLEX,
2 BUT OCCASIONALLY THEY WILL BE MOVED TO A DIFFERENT LOCATION
3 INTO A PERMANENT BUILDING.

4 Q. SO IT WAS MORE A LIMITATION OF AN INTERNAL
5 POLICY?

6 A. THAT IS RIGHT.

7 Q. IS IT FAIRLY COMMON TO SEEK EXTENSIONS BEYOND
8 THE TWO YEAR PERIODS FOR VARIOUS LEASES, THAT YOU HAVE BEEN
9 INVOLVED WITH?

10 A. OCCASIONALLY, WE HAVE HAD SOME THAT WE'VE
11 EXTENDED. WE'VE HAD SOME WE'VE SENT BACK EARLY.

12 Q. I GUESS MY QUESTION IS, IS IT A FAIRLY COMMON
13 PRACTICE OR NOT AN UNUSUAL PRACTICE MORE PRECISELY TO SEEK
14 AN EXTENSION?

15 MR. ELEGANTE: YOUR HONOR, I'M GOING TO OBJECT.
16 I THINK THE WITNESS ANSWERED THE QUESTION.

17 THE COURT: SUSTAINED.

18 Q. (BY MR. BOSWICK) MR. WARING, DURING THE
19 ERECTION OR ASSEMBLY OF THESE PARTICULAR UNITS, DID YOU
20 EVER HAVE OCCASION TO VISIT THE SITE?

21 A. I THINK ONCE OR TWICE I WENT DOWN THERE AND
22 LOOKED AT HOW THEY WERE BEING BROUGHT IN AND ATTACHED
23 TOGETHER. THAT WAS NORMALLY NOT MY FUNCTION. IT WAS THE
24 FUNCTION OF OUR FACILITY ENGINEER.

25 Q. MR. WARING, I'M GOING TO SHOW YOU SOME EXCERPTS