

Lease No. F99-182355

**LEASE AGREEMENT
BETWEEN**

**IDAHO INNOVATION CENTER
AND
LOCKHEED MARTIN IDAHO TECHNOLOGIES COMPANY**

LEASE AGREEMENT NO. F99-182355
BETWEEN THE
IDAHO INNOVATION CENTER
AND
LOCKHEED MARTIN IDAHO TECHNOLOGIES COMPANY

THIS LEASE, entered into and made effective, September 28, 1999 by and between Idaho Innovation Center whose business address is 2300 North Yellowstone, Idaho Falls, ID 83401 (hereinafter called the "Landlord"), and LOCKHEED MARTIN IDAHO TECHNOLOGIES COMPANY (LMITCO) (hereinafter called the "Tenant"), an Idaho corporation with operation offices in Idaho Falls, Idaho, acting under its Contract No. DE-AC07-94ID13223 with the United States of America, represented by the United States Department of Energy (called "DOE" or the "Government");

WITNESSETH THAT

The parties hereto, for the considerations hereinafter set forth, covenant and agree as follows:

ARTICLE 1 - FUNDAMENTAL LEASE PROVISIONS

1.1 The following is a summary of certain lease provisions which are a part of, and in certain instances, are referred to in more detail in subsequent articles of this lease. The content of this article shall not prevail against the content of articles to follow:

- A. LANDLORD: Idaho Innovation Center
 - B. TENANT: Lockheed Martin Idaho Technologies Company
 - C. SIZE OF PREMISES: 2100 square feet high bay production space
 - D. TERM: Eighteen month term (September 28, 1999 through March 27, 2001) with two six-month options, beginning March 28, 2001.
 - E. RENT: Per month, payable in arrears at the beginning of each month in accordance with the following schedule:
- | | |
|--------------------------------|--------------------------|
| <u>F.PERIOD OF PERFORMANCE</u> | <u>FIXED PRICE</u> |
| Eighteen-month firm term | \$ <u>1,365.00/month</u> |
| First six-month option | \$ <u>1,365.00/month</u> |
| Second six-month option | \$ <u>1,365.00/month</u> |
- G. CONSTRUCTION BUILDOUT: A ceiling price of \$6,871.00 has been established to pay for completion of build-out modifications to the leased space in order to meet the requirements established by the project scope.

1.2 TO HAVE AND TO HOLD the above premises with their appurtenances for the term of eighteen months beginning September 28, 1999 and ending at midnight March 27, 2001. provided that this Lease may, at the option of the Tenant or the Government, be renewed for a period not to exceed two six-month renewal terms at the rental rate specified above and under the terms and conditions specified herein, provided notice be given in writing to the Landlord at least sixty (60) days before this Lease or any renewal thereof would otherwise expire, that the option is exercised. Payment by Tenant and acceptance of payment by Landlord of the first months rent for the option renewal term shall constitute exercise of the renewal option irrespective of timely submittal by Tenant of notice to renew.

ARTICLE 2 – PREMISES

2.1 Landlord leases to Tenant and Tenant leases from Landlord certain real property (The "Premises") situated within a portion of a building, which is located in the City of Idaho Falls, County of Bonneville, State of Idaho. The space number or address of the space is Bay 3 - Bonneville County Technology Center, located in Idaho Falls, Bonneville County, Idaho, and the approximate number of square feet contained therein is 2,100. As used herein, the term "Center" shall mean the entire Bonneville County Technology Center premises as such is constituted from time to time including the Center building, the parking and common areas and the peripheral free standing buildings, if any.

2.2 As part of this lease, Landlord shall provide in addition to the leased premises, at no additional cost, the services indicated by Attachment A, Service Policies.

ARTICLE 3 - TITLE

The Landlord warrants it has title to the property covered by this Lease, or sufficient interest and rights in the property to guarantee the Lease Agreement with no interference to the Tenant's rights of possession under the Lease. Should the Tenant suffer any damages or expenses as the result of any defect in the Landlord's title or rights and interests in the property, the Landlord shall reimburse the Tenant for all such damages or expenses.

ARTICLE 4 - RENT

The Tenant will pay the Landlord rent at the monthly rate as established in Article 1 above and commencing with the effective date of this Lease. All rental payments under this Lease will be made by the Tenant on a monthly basis, beginning at the end of the first calendar month of the Lease term, without submission of invoices or vouchers. If the effective date of this lease is not on the first day of a month, the rental payment for the first month of occupancy by the Tenant shall be determined on a pro rata basis predicated on a 30-day month. If Tenant does not pay rent within 30 days after due date, the rent payment shall be determined delinquent and the Default Policies and Procedures (Attachment B) shall come into effect.

ARTICLE 5 - SIGNAGE

5.1 Landlord will provide a portion of the building for the placing of signs at Tenant's expense. These signs will be located adjacent to leased space and the front marquee of the building.

5.2 Signs, Awnings, Roof

Tenant shall not be allowed to install any exterior lighting canopies or awning, or any exterior decorations or paintings, or install any drapes, blind shades or other coverings on exterior windows and doors, erect or install any sign, window or door lettering, place cards, decorations or advertising media of any type which can be viewed from the exterior of the Premises for the conducting of its business.

ARTICLE 6 - USE

6.1 It is understood that Tenant shall be allowed to use the Premises for the purpose of conducting its business as a research and development entity operating as an extension of the Idaho National Engineering and Environmental Laboratory.

6.2 Tenant's Obligation

Tenant will provide the equipment and furniture necessary for conducting business on the premises. However, it is agreed by the parties that these items will belong to the Tenant and will not be considered part of the fixed construction on the Premises and that Tenant, upon termination of this Lease and with written consent of the Landlord, will be allowed to remove said items at Tenant's cost, provided it is agreed that Tenant will be required to make any restoration, alternation or improvements to the existing buildings, structures or land as a result of the removal of said items. Tenant will exercise reasonable care in removing said items and will make every effort not to destroy or damage any structures when removing said items. Tenant shall be responsible for a reasonable storage charge in connection with any furniture or equipment remaining 30 days after termination of Lease.

ARTICLE 7 - MAINTENANCE OF PREMISES

7.1 Maintenance by Tenant

Tenant, at its sole cost and expense, shall pay all telephone, electrical power, water charges, janitorial and maintenance expenses incurred in the leased Premises.

7.2 Maintenance by Landlord

Landlord shall make all repairs including structural repairs, repairs to the exterior of the Premises including roof, skylight, sidewalks and parking areas, and Landlord shall make and be responsible for all repairs to the electrical, plumbing, heating, air conditioning, sprinkler and hot water systems. The Landlord shall also make any repairs necessitated by water seepage or by other causes not under the Tenant's control. Additionally, Landlord shall be responsible for all snow removal of the premises.

7.3 Notice of Need for Landlord's Maintenance

Tenant shall give to Landlord prompt written notice of any need for repairs which are the Landlord's obligation under the terms of this Lease and such repairs shall be remedied by Landlord, at the expense of Landlord, with due diligence.

7.4 Tenant's Right to Cure

If Landlord refuses or neglects to repair and maintain the Premises as required under the Lease the Tenant as soon as ten (10) days after demand, may make such repairs without liability on its part to Landlord for any loss or damage that may accrue to Landlord by reason thereof and upon completion thereof, Landlord shall pay Tenant's cost for making such repairs within

forty-five (45) days upon presentation of a bill thereof. Should Landlord fail to directly compensate Tenant for the cost to cure, Tenant may set-off the amount of repairs against the rent due. Failure of landlord to pay such amount within forty-five (45) days of receipt of such bill shall constitute a material default by Landlord hereunder.

ARTICLE 8 - ALTERATIONS TO PREMISES

8.1 Consent of Landlord

Tenant shall not make or cause to be made any alterations, additions or improvements to the Premises without first obtaining Landlord's written approval, which approval shall not be unreasonably withheld. Tenant shall present to Landlord plans and specifications for any such work at the time approval is sought. In the event Landlord consents to the making of any such alterations, additions or improvements to the Premises, the same shall be paid by Tenant at Tenant's sole cost and expense.

8.2 Manner of Completion

All such work shall be done in a good and workmanlike manner and diligently prosecuted to completion so that, except as absolutely necessary during the course of such work, the Premises shall at all times remain in a complete operating unit.

8.3 Mandatory Alterations or Additions

Should any law or ordinance, or should any governmental agency having jurisdiction, require alterations or additions to the Premises as a result of the use or occupancy by Tenant, such alterations or additions shall be properly constructed by Landlord, at its sole cost and expense.

ARTICLE 9 - UTILITIES

9.1 Tenant shall be solely responsible for, and shall promptly pay before delinquency, all charges (including deposits and applicable taxes, if any) for hookup and use or consumption of heat, sewer, water, gas, electric, telephone or any other utility services supplied to Tenant or to the Premises during the term hereof (including sales, utility, franchise or other applicable taxes, if any and unless Tenant provides evidence of an exemption from any such taxes), regardless of whether such be provided by Landlord or a local utility company through separate or common meters.

9.2 Landlord agrees to provide at it's own cost and expense a suitable trash receptacle and regularly scheduled pick-up service sufficient to handle Tenant's own needs in order to prevent the unsightly accumulation of trash and other debris.

ARTICLE 10 - COMMON AREAS

10.1 Definition of Common Areas

"Common Area(s)" mean those areas in the Building available for the common, or "joint" use and/or benefit of landlord, Tenant and other tenants and permanent occupants of the Building and their limitations, parking areas, access roads, driveways, retaining walls, fences, fountains, parking structures, building exteriors and roofing, exterior canopies and supports for such,

planters, curbs, utility lines, landscape areas, flagpoles, works of art, light poles and fixtures in parking areas or fixtures in the enclosed Building, common truck service ways or tunnels, common loading docks, pedestrian walkways, courts, stairs, ramps, sidewalks and public benches and restrooms.

10.2 Rights Respecting Common Areas

Tenant, and its employees, agents, servants, customers and other invitees shall have pursuant to the terms and conditions of this Lease, the non-exclusive right in common with Landlord, other tenants and permanent occupants of the Center (and their respective employees, agents, servants, customers and other invitees), to use and or receive the benefit of the common Areas of the Center as defined above, as such common areas are designated by Landlord from time to time. Landlord shall not voluntarily close Common Areas to discourage non-customer parking if such would materially and adversely affect parking areas regularly used by Tenant or affect Building access points to adjacent streets. In addition, Landlord shall only voluntarily close Common Areas to facilitate changes or repairs to the minimum extent necessary to accomplish such changes or repairs.

ARTICLE 11 - ASSIGNMENT

Tenant shall not be allowed to transfer, assign or hypothecate this Lease in full or in part or sublet the premises or any part thereof, without the prior written consent of the Landlord, which consent shall not unreasonably be withheld. Additionally, the terms and provisions of this Lease and the conditions herein shall bind the Landlord, and the Landlord's heirs, executors, administrators, successors, and assigns. Tenant, however, retains the right, at any time, to assign or sublet the premises hereby leased or part thereof to the Government or the Government's designee without the consent of the Landlord, and upon such assignment, DOE will guarantee payments hereunder.

On September 30, 1999, LMITCO's prime contract with DOE, under which this Lease was awarded will expire. Thus, pursuant to this article, this Lease is assigned to Bechtel BWXT Idaho, LLC, under its DOE Prime Contract No. DE-AC07-99-ID13727, effective October 1, 1999.

ARTICLE 12 - COVENANTS OF LANDLORD

12.1 Landlord warrants that it has good and sufficient title to the property and premises leased hereunder and all improvements thereon, subject to existing right of ways and covenants.

12.2 Landlord covenants and agrees to lease the remaining space available in the Center to reputable businesses or entities of a professional nature. Both parties agree it is the intent of the Center to promote an atmosphere conducive to new businesses and Landlord agrees to make every reasonable effort to promote and maintain said atmosphere.

ARTICLE 13 - DAMAGE BY FIRE

13.1 Minor Damage

Landlord shall promptly repair any damage that affects only a minor portion of the Premises without rendering a major portion of the Premises unfit for Tenant's use and purposes hereunder. Until the repairs are complete, Tenant's rent payment obligation under this Lease shall be reduced on a pro-rata basis as measure by the portion or percentage of the Premises which is unfit for Tenant's use.

13.2 Major Damage

If the Premises are so damaged or destroyed so as to render a major portion of the Premises unfit for Tenant's intended use thereof, Landlord shall have thirty (30) days to notify Tenant of its intent to restore the premises to the same condition or this Lease shall terminate. If Landlord fails to notify tenant of its intentions to restore within thirty (30) days, this Lease shall terminate. Tenant shall have no obligation to pay rent for the Premises for the period during which the Premises remains unfit for Tenant's intended use.

ARTICLE 14 - INSURANCE

It is agreed that the Landlord and Tenant shall respectively obtain whatever insurance that they may consider prudent and necessary to protect their respective and separate best interests and that neither party shall be obliged to obtain insurance as regards the other party's real or personal property; Provided, however, that this provision shall not be construed as a waiver of any rights or subrogation or entitlements in law by either party.

It is understood and agreed that Tenant is a prime contractor for the Department of Energy, pursuant to its Prime Operating Contract No. DE-AC07-94ID13223. As such, Tenant is directed by Government policy regarding its liability and property damage insurance coverage. Its liability limit is \$300,000 and property damage limit is \$300,000 per occurrence. Tenant hereby certifies that the foregoing insurance limits are accurate, and that above those limits a self-insurance status exists through the United States Government. It is agreed that this arrangement will fulfill the tenant insurance obligations under this Lease; provided, however, that neither this nor any other provision covering insurance coverage contained in this Lease Agreement constitutes a waiver of subrogation or entitlement in law by either party.

ARTICLE 15 - CONDEMNATION

If the Premises shall be acquired or taken by condemnation or other related governmental or quasi-governmental proceedings, or transfer in lieu thereof, this Lease shall terminate as of the date Tenant loses the possession of the Premises. If any part to the Premises shall be acquired or taken by such proceedings, or transfer in lieu thereof, and such partial taking is sufficiently extensive, in Tenant's reasonable judgment, to render the remaining Premises unsuitable for Tenant's business operations, then this Lease shall terminate as of the date Tenant loses possession of the part of the Premises so taken.

ARTICLE 16 - COMPLIANCE WITH REGULATIONS

The Tenant shall promptly execute and comply with all statutes, rules, orders, ordinances, requirements, and regulations of the Landlord, State or Federal government and any and all of its departments and bureaus applicable to said demised Premises for the correction, prevention or abatement of nuisances or other grievances in, upon or connected with said premises, during the said terms arising from Tenant's occupancy of the premises or performance of its operations and

business, and that periodic safety inspections may be conducted by the Fire Department, and insurance company, only with the express consent of Tenant, except that all structural alterations or additions and all other actions or changes required that do not arise directly from Tenant's occupancy of the premises or performance of its operations or business, shall be made by Landlord at its expense.

ARTICLE 17 - OBSTRUCTION

The Tenant further agrees that it will not encumber or obstruct the said sidewalk in front of or adjacent to any building or the dock area or parking area or allow the same to be obstructed and that no goods, material or machinery or other articles shall be stored on said sidewalk or in said hallways or on the said dock area of the premises leased, or left there for a longer period than shall be absolutely necessary to transport them to or from the premises of the Tenant.

ARTICLE 18 - ATTORNMENT

In the event of a sale or assignment of the Landlord's interest in the building of which the Premises are a part, or in the event of any proceeding brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage or other security instrument given by the Landlord covering the Premises, Tenant shall have the option to attorn to the assignee or purchaser and recognize such purchaser as Landlord under the Lease, or the Tenant, at its option, shall have the right to terminate this Lease.

ARTICLE 19 - QUIET ENJOYMENT

Tenant, upon paying the rents and observing and performing all the terms, covenants and conditions of its part to be performed hereunder, shall have the "quiet enjoyment" (as defined by law) of the Premises for the term hereof except as provided in paragraph 21 (below).

ARTICLE 20 - CANCELLATION

Either party may terminate this Lease without incurring any liability for damages or penalty of any kind, by giving the other party sixty (60) day written notice of termination.

ARTICLE 21 - DISPUTES

21.1 The parties agree that the appropriate forum for resolution of any dispute of claim pertaining to this Lease shall be a court of competent jurisdiction as follows:

- Subject to the following paragraph of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court for the District of Idaho in Pocatello, Idaho.
- Provided however, in the event that the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville, with venue in the District Court of the Seventh Judicial District for the District of Idaho in Idaho Falls, ID.

21.2 Any substantive issue of law in such dispute, claim, or litigation shall be determined in accordance with the body of law applicable to procurement of goods and services by the Federal

Government. Nothing in this clause shall grant to the Landlord by implication any statutory rights or remedies not expressly set forth in this Lease.

21.3 There shall be no interruption of this Lease during the pendency of any dispute that may arise between the parties hereto or between the Landlord and its subcontractors in support of this Lease.

21.4 The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-610) shall not apply to this Lease provided, however, that nothing in this clause shall prohibit Tenant, in its sole discretion, from sponsoring a claim of the Landlord for resolution under the provisions of its prime contract with DOE. In the event that Tenant so sponsors a claim at the request of the Landlord, the Landlord shall be bound by the decision of the cognizant DOE contracting officer to the same extent and in the same manner as the Tenant.

ARTICLE 22 - ACCESS BY LANDLORD

Landlord or Landlord's agent shall not enter the Leased Premises without the express permission of Tenant. Once authorization is obtained from Tenant, such entry shall be performed during reasonable times and shall be limited to examination, inspection, to show Premises to prospective purchasers or lessees of the building, and to make all reasonable repairs, alterations, improvements or additions as Landlord may deem necessary or desirable. With Tenant's authorization, Landlord shall be allowed to take all materials into and upon Leased Premises that may be required therefor without the same constituting an eviction of Tenant in whole or in part, and the rents will abate if such repairs result in an unreasonable interruption of Tenant's business. During the six months prior to the expiration of the Lease Term of the Lease or any Renewal Term, Landlord may only exhibit the Leased Premises to prospective tenants with express prior permission of the Tenant and place upon Leased Premises the usual notice "To Let" or "For Rent" which notices Tenant shall permit to remain thereon without molestation; provided, however, this Article 22 shall not alter or restrict Tenant's rights under subpart 1.2 of this Lease.

ARTICLE 23 - MISCELLANEOUS

23.1 Notwithstanding anything to the contrary herein, this Lease consists of this document and the following attachments, said attachments being a part of this Lease and integral part of the agreement of the parties:

- Attachment A - SERVICE POLICIES
- Attachment B - DEFAULT POLICIES AND PROCEDURES
- Attachment C - INCUBATOR GUIDELINES (Eligibility)
- Attachment D - HAZARDOUS MATERIAL POLICY

23.2 No agreements, other than this Lease Agreement, and attachments, made or alleged to have been made in consideration of the taking of this Lease, shall be binding or obligatory upon Landlord or Tenant, unless the same be in writing signed by the Landlord and Tenant.

23.3 All covenants and agreements herein made shall extend to and be binding or obligatory upon the heirs, devisees, executors, administrators, successors in interest and assigns of both the said Landlord and the said Tenant. No modification of this Lease shall be binding unless evidenced by an agreement in writing between the parties hereto.

23.4 Subject to the limitations of any assignment hereof, this Agreement is binding upon and shall inure to the benefit of the respective heirs, successors and assigns and personal representatives to the parties hereto.

23.5 This Lease shall be deemed to have been executed in Idaho Falls, Idaho, at the address of Tenant set forth above, and the laws of the State of Idaho shall govern the validity, performance, and enforcement of any obligation contained herein.

ARTICLE 24 - NONDISCRIMINATION

The Tenant agrees not to discriminate against any client, employee or application for employment or for services because of race, creed, color, national origin, sex or age with regards to, but not limited to the following: employment upgrading; demotion; or transfer; recruitment or recruitment advertising; layoffs or termination, rates of pay or other forms of compensation, selection for training; rendition of services. Tenant must also comply with any applicable Affirmative Action Programs.

ARTICLE 25 - AUTHORITY OF SIGNATORIES

Each person executing this Lease individually and personally represents and warrants that he/she is duly authorized to execute and deliver the same on behalf of the entity for which he/she is signing (whether it be a corporation, general or limited partnership, or otherwise) and that this Lease is binding upon said entity in accordance with its terms.

ARTICLE 26 - ADMINISTRATION AND NOTICES

26.1 The Landlord agrees, unless the Tenant is otherwise notified in writing, that Mr. Rick Ritter and/or his duly authorized representative will have overall responsibility and authority under the Lease, and unless a change in assignment is made by the Landlord, he and/or his duly authorized representative will be available at all reasonable times in connection herewith. It is agreed that, unless the Landlord is otherwise notified in writing, Tenant's responsibilities under this Lease shall be administered by Glenn Clemons.

26.2 Any notice or order given under the terms of this Lease shall be considered as having been given:

- A. To the Tenant, if delivered personally to Glenn Clemons, or if mailed by U.S. Mail, certified letter return receipt requested, addressed to Lockheed Martin Idaho Technologies, Glenn Clemons, PO Box 1625, Idaho Falls, Idaho 83415-3521.
- B. To the Landlord, if delivered personally to its duly authorized representative at the Bonneville County Technology Center or if mailed by U.S. Mail, addressed to Bonneville County Technology Center, 2300 N. Yellowstone, Idaho Falls, ID 83401.

ARTICLE 27 - HAZARDOUS SUBSTANCES INDEMNIFICATION

Landlord will indemnify and hold harmless Tenant, DOE and the federal government from all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including, without limitation, all sums paid for settlement of claims, attorneys fees, consultant and expert fees) arising during or after the lease term from or in connection with the presence of hazardous substances in or on the premises unless the hazardous substances are present solely as a result of the negligent or willful misconduct of Tenant. This indemnification includes, but is not limited to, any costs incurred due to any investigation of the site or any cleanup, removal, or restoration mandated by federal, state, or local agency or political subdivision. This indemnification specifically includes all costs due to hazardous substances that flow, diffuse, migrate or percolate into, onto, or under the premises after the lease term commences. Hazardous substances, as used in this article, include those substances within the definition for hazardous substance under CERCLA at 40 C.F.R. 300.5. The Landlord shall remove or otherwise dispose of such hazardous substances in accordance with all federal, state and local laws, regulations and ordinances.

If Landlord violates any of the provisions of this article, Tenant, at its sole option, may elect any of the following remedies and such remedies are not mutually exclusive. Tenant may require removal of any hazardous substance and restoration of the leased premises solely at Landlord's expense. Tenant may elect to vacate the premises and any contrary provision in this lease notwithstanding, no further rents are due after the date Tenant vacates the premises. Tenant may also elect to remain in the leased premises and withhold payment of rent until all hazardous substances have been removed and the leased premises have been fully restored to their condition prior to removal, all at Landlord's expense. Tenant is also entitled to a reduction in rent in proportion to any portion of the leased premises that are made in rent in proportion to any portion of the leased premises that are made untenable for occupancy as a result of the presence of hazardous substances, during their removal, or during restoration of the premises

ARTICLE 28 - AVAILABILITY OF FUNDS

The Tenant's obligation hereunder is contingent upon the availability of appropriated funds from the United States Congress from which payment for the Lease purposes can be made. No legal liability on the part of the Tenant or the Government for payment of any money shall arise unless and until the funds are made available to the Tenant.

ARTICLE 29- FAILURE IN PERFORMANCE

In the event of failure by the Landlord to provide any obligation, service, utility, maintenance, or repairs required of it under this Lease within a reasonable time after written notice to the Landlord, the Tenant shall have the right to secure said obligations, services, utilities, maintenance, or repairs and shall deduct the cost thereof from rental payments.

ARTICLE 30 - COVENANT AGAINST CONTINGENT FEES

The Landlord warrants that no person or selling agency has been employed or retained to solicit or secure this Lease 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 Landlord for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Lease without liability or in its discretion to deduct from the rental price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee. (Licensed real estate agents or brokers having listings on property for rent, in accordance with general business practice, and who have not obtained such licenses for the general business practice, and who have not obtained such licenses for the sole purpose of effecting this Lease, may be considered as bona fide employees or agencies within the exception contained in this article).

ARTICLE 31 - OFFICIAL NOT TO BENEFIT

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

ARTICLE 32 - EXAMINATION OF RECORDS BY THE COMPTROLLER GENERAL

The Landlord agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under this Lease or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Parts 1-10, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Landlord involving transactions related to this Lease and this Lease only.

The Landlord further agrees to include in all its 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 (3) 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 Parts 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 article excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts of purchase orders for public utility services at rates established for uniform applicability to the general public.

The periods of access and examination described above, for records which relate to (1) appeals under the "Disputes" article of this Lease, and (2) litigation or the settlement of claims arising out of the performance of this Lease, or (3) costs and expenses of this Lease as to which exception has been taken by the Controller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

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

ARTICLE 33 - FORCE MAJEURE

If either Landlord or Tenant is delayed, hindered or prevented from performing any act required under this Lease because of acts of God, failure of utility power, riots, civil commotion,

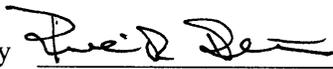
insurrection, war, or other reasons not the fault of the party delayed, hindered or prevented, and is beyond their control (financial inability excepted), performance of the action in question is excused for the period of delay and the period for performance of such act is extended for a period equivalent to the period of the delay.

ARTICLE 36 - ARTICLES INCORPORATED BY REFERENCE

The following Federal Acquisition Regulation (FAR) clauses, Department of Energy Acquisition Regulation (DEAR) clauses, and Federal Acts are incorporated herein by reference.

1. Clean Air and Water, FAR 52.223-2 (\$100,000).
2. Affirmative Action for Handicapped Workers, FAR 52.222-36.
3. Affirmative Action for Special Disabled and Vietnam Era Veterans FAR 52.222-35 (10.000).
4. Utilization of Small Business concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals, FAR 52.219-8.
5. Utilization of Women-Owned Small Businesses, FAR 52.219-13.
6. Limitation on Payments to Influence Certain Federal Transactions (Jan. 1990) - FAR 52.203-12 (\$100,000).
7. Architectural Barriers Act
8. Americans with Disabilities Act

LANDLORD

By 

Title Director

Date 9/28/99

TENANT

By 

Glenn Clemons
Title Subcontract Administrator

Date 9/28/99

IDAHO INNOVATION CENTER/BONNEVILLE COUNTY TECHNOLOGY CENTER

SERVICE POLICIES

1. **Professional Reception Service**

Visitors are met and greeted by a Customer Service Representative from 7:30 am to 6:00 pm Monday through Friday. All visitors are asked to sign a visitor's log and then directed to appropriate person or business. No outside sales solicitation is allowed within the facility.

2. **Telephone Answering/Message Service**

All calls are answered with your business name by our Customer Service Representative after four rings. Tenants can also forward calls while in their offices to the front desk. The telephone system offers an office to office intercom, call transfer and forwarding, conferencing, call reminder and recall. In October of 1996 voice mail will be available to all tenants at a nominal cost. Each space is equipped with at least one digital and one analog phone line. Basic phone service and long distance carriers are the responsibility of the tenant. Our Customer Service Representative will provide assistance getting this established and additional lines will be provided at cost.

3. **Clerical Services**

All tenants have five hours per month of clerical assistance. This can include copying, faxing, word processing, data entry, and filing. All are logged and tracked by the Customer Service Representative. All requests are on a first come first serve basis. Tenant work is our highest priority. All work required over 5 hours per month is at the rate of \$8.25 per hour. Members of our staff are functional in most popular software packages.

4. **Mail Service**

Each tenant's mail is delivered on a daily basis to a central office mail box. Mail can also be bundled and shipped to another address for the cost of postage or shipping or held for later pick-up. We also have a postal scale and meter for mailing purposes. Postage use is tracked and billed at cost on a monthly basis. We also have bulk mailing capabilities on cost plus basis.

5. **Basic Furniture**

Each tenant space can be furnished with a desk, chair, and one phone handset. Other furniture may be available at a no cost basis. This may include bookshelves, filing cabinets, extra chairs, waste baskets, and work tables. Additional phones can be rented at a cost of \$4.00 per month. If additional furniture needs arise please let the Customer Service Representative know and we will attempt to locate and obtain it at the lowest possible cost.

6. Copying Service

Copying can be done on a self-service basis. Each tenant is given a code number to use. The facility has a Canon NP 6050 that can do almost any copying job (collating up to 20 pages, two sided, reduction and enlargement, stapling). The Customer Service Representative is available for assistance on complicated jobs. Copying is billed on a monthly basis at a rate of .07 cents per copy. Copying large jobs can be done through your clerical services but should be scheduled through the Customer Service Representative to ensure timely completion.

7. Facsimile Service

Each tenant is assigned a number to use when sending faxes (same as copier number). Faxes are billed monthly at the rate of .50 cents per page for out going only. All incoming faxes are free.

8. Conference and Meeting Rooms

Each tenant has the use of the conference and meeting rooms on a first come first serve basis at no cost. All uses must be scheduled through the Customer Service Representative who maintains a schedule book. The facility has tables and chairs for nearly any room set-up. We can accommodate 20-25 in a classroom setting and 50 or more in theater setting. The large conference room is wired for satellite down link capability. Each room is equipped with a white board and markers.

9. Equipment Access

The facility has the following equipment for use by tenants either in or out of the facility:

- A. Overhead Projector (2)
- B. Flip Chart Easels
- C. LCD Projection Panel
- D. Lap Top Computer
- E. Portable Screen (60")
- F. 19" TV/VCR
- G. Equipment Cart (2)
- H. Co Binding Machine
- I. Paper Shredder
- J. Paper Cutter
- K. Computer
- L. Forklift
- M. Pallet Jacks

All equipment must be scheduled with the Customer Service Representative and is available on a first come, first serve basis.

10. Computer Lab

The Yellowstone facility has a small computer lab that can be used by tenants at any time during normal work hours (7:30 am - 6:00 pm). This lab can be available outside those hours by arrangement with the Customer Service Representative. All computers are older limited use models. Most have word processing (Microsoft Word or WordPerfect), and spreadsheet (Lotus, Excel). Some also have business plan and/or foreign trade software.

11. Research Services

The facility has access to several CD-ROM and online information sources. CD sources include D & B Marketplace, National Trade DataBank and Phone Pro. We are continually adding new CD resources. On line sources include SBA online, Tel-Tech, Batorlink and Knowledge Network. All tenants receive two free searches are done through the Business Development Specialist.

12. Business Assistance

High Quality business covering a wide variety of areas are available at no cost to all tenants. Available areas include: business planning, market research and planning, financial records, brochure development, competition analysis, financing options, supplier and material location, engineering personnel.

All services are provided by the local Service Corps of Retired Executives (SCORE), the Regional Small Business Development Center (SBDC) or by the Innovation Center staff (Manager, Business Development Specialist or MBA Intern).

Additional assistance is available through the Consultant's Directory on sliding scale basis, included in this directory are attorneys, accountants, advertising and marketing professionals and others who have indicated willingness to work with small businesses.

13. Library

A wide variety of books, tapes and other copy materials are available for checkout and use. A list of library contents can be obtained from the Customer Service Representative.

14. Financial Service

The Center houses a Revolving Loan Fund that is available to tenants and other businesses in Bonneville County. A loan officer is on staff to aid with financing options and loan application assistance.

15. Meeting, Seminars and Training

The Center hosts a Brown Bag luncheon twice a month. Each luncheon has a business resources person (insurance, legal, etc.) To answer questions. The Center hosts a once a month tenant breakfast. Each breakfast has a presentation or speaker on a business topic. The Center hosts training sessions sponsored by the Small Business Development, U.S. Chamber of Commerce, Microsoft and other entities. The Center also co-sponsors the Eastern Idaho Inventor's Forum and the Rocky Mountain Venture Group and its newsletter. A schedule of events is sent out monthly or contact the Customer Service Representative.

ATTACHMENT B: Default Policies & Procedures

IDAHO INNOVATION CENTER/BONNEVILLE COUNTY/TECHNOLOGY CENTER
DEFAULT POLICIES AND PROCEDURES

An IDAHO INNOVATION CENTER/BONNEVILLE COUNTY/TECHNOLOGY CENTER tenant's rent becomes delinquent when not received by, on or before the fifth day of each month.

If a delinquency occurs, the following procedures will be followed:

1. Manager will notify the tenant in writing that rent is delinquent.
2. The tenant will within two working days bring the rent current, or
3. The tenant will meet with the Incubator Manager to discuss the delinquency. The Incubator Manager will notify the Board of Directors of the delinquency.
4. If the tenant is unable to pay the rent the tenant will consult with the Incubator Manager to develop a written plan to cure the delinquency. This plan will be developed within ten working days following the notice of delinquency.
5. The plan to cure the delinquency will be presented to the Board of Directors. The Board of Directors may be polled by phone to gain plan approval.
6. On approval of the plan it becomes an attachment to the lease until the delinquency is cured.
7. If the plan to cure the delinquency is not approved by the Board of Directors as presented then the Board of Directors may make additions and/or deletions to the plan to gain Board approval. This revised plan will be resubmitted to the tenant for approval.
8. The tenant will have three working days to review any changes required by the Board.
9. Failure to come to a written agreement to cure the delinquency within 30 days may result in the termination of tenant's lease. The Bonneville County Board of Commissioners shall be informed by the Board of Directors of any delinquency in rent which exceeds 30 days.

ATTACHMENT C: Lease Agreement

IDAHO INNOVATION CENTER/BONNEVILLE COUNTY TECHNOLOGY CENTER

INCUBATOR GUIDELINES

Section 1. All requests for incubator tenant space/services and lease arrangements will be reviewed and approved by the Board of Directors of the **IDAHO INNOVATION CENTER/BONNEVILLE COUNTY TECHNOLOGY CENTER.**

Section 2. Tenants must meet the following criteria:

- A. Do not directly compete with an existing local business in Bonneville County.
- B. Tenant firm must be a For-Profit Business entity; or
- C. New, Start-Up Business; or
- D. An expanding existing business which has been in existence for less than two years from date of application. "Expanding" will mean a business which can create new employment at a prescribed level as a condition of tenancy in the incubator, i.e., 10 new jobs within 12 months. "Existing" will mean a business which the owner(s) have been operating the business on a more than part-time basis (more than 25 hours a week) for the previous two years; or
- E. A "Part-Time" business venture in which the owner(s) are committing to operate on a full-time basis and as a sole source of income, not including passive investments of the owner(s), i.e. rental income, securities etc.; or
- F. An existing business which presently does not have an operation in the County and will either re-locate or open a subsidiary in the incubator can be considered eligible for incubator tenancy.
- G. A Non-Profit organization will be considered for tenancy on a case-by-case basis.

Section 3. Eligible business activities shall be light manufacturing, advanced technology, research and development, assembly, industrial (limited), and services and any other activity deemed appropriate by the Board of Directors. Ineligible business activities shall be firms which are primarily retail or wholesale (warehousing/distributing).

Section 4. The business and business activities must be compatible with zoning requirements. The appropriate space must be available for lease.

Section 5. The tenant must be willing to execute a lease agreement which includes:

1. Preparing a Business Plan which contains firm job creation estimates.
2. Willingness to re-locate within Bonneville County upon leaving the Incubator.

Section 6. Other weighted tenant selection criteria will include:

- A. Job creation and growth
- B. Demonstrated need for incubator space
- C. A significant percentage of business is owned by the active principals.
- D. A realistic Business Plan has been prepared which demonstrates the need for the product or service in the market place. A Marketing Plan must be included in the Business Plan.
- E. Criteria for judging the viability of NEW BUSINESSES will include:
 - 1. The demonstrated viability of the industry.
 - 2. Background and ability of active principals to operate the particular type of business, and
 - 3. Adequate identification of and access to capital for planned development must be shown.
- F. Criteria for evaluating EXISTING BUSINESSES will include:
 - 1. Normal financial ratios (to measure debt burden).
 - 2. Adequate financial exhibits.
 - 3. Demonstrated access to funds to support current operations growth, and
 - 4. A successful past profitability and growth record.
- G. Potential for Value-Added business activities.
- H. Potential that the business has for drawing upon local/regional/Idaho suppliers and services.

Section 7. BUSINESS PLAN: A Business Plan is expected to be submitted with an application for leasing incubator space or before the actual incubator lease is signed. The LESSEE must follow the submitted Business Plan. If the applicant does not have a written business plan, they may lease incubator space at the discretion of the IIC manager, if they enroll in the ISBDC NxLevel for Entrepreneurs business planning seminar and provide a written plan to IIC/BCTC management within 60 days of completion of the NxLevel for Entrepreneurs program. Failure to follow this plan will allow for unilateral termination of the lease by the COUNTY upon notice set forth in the Lease Agreement.

- A. Incubator management may require tenant to attend NxLevel for Entrepreneurs or similar business planning course.

The Business Plan will be reviewed semi-annually to determine that the LESSEE's operation is in compliance with its business plan, to determine the LESSEE's progress and to update the plan.

At the time of lease renewal, the LESSEE along with the Incubator Manager and Board of Directors shall establish written milestones for the tenant's business for the next year.

Section 8. LESSEE will submit monthly financial and narrative reports at the end of each. LESSEE should expect to hold a semi-annual review meeting with the Board of Directors. Sales levels, targeted job levels and any business plan change shall be reviewed at that time.

Section 9. A tenant who requires additional renovation work or utility hook-ups other than what is provided in the basic building layout will be expected to bear the cost of such renovation unless other arrangements are made with the Board of Directors.

Section 10. Maximum term of incubator tenancy shall be 3 years, unless additional year/months of tenancy is approved by the IIC/BCTC manager.

Section 11. A security deposit will be required and "Delinquent Rent Policies and Procedures" have been adopted and will be part of the lease agreement.

Section 12. The Lessee agrees to allow the IIC/BCTC manager to use general information about the Lessee business for public relations efforts to promote the IIC/BCTC and will provide general information upon the request of the IIC/BCTC manager.

ATTACHMENT D: Hazardous Material Policy

IDAHO INNOVATION CENTER/BONNEVILLE COUNTY/TECHNOLOGY CENTER

HAZARDOUS MATERIAL POLICY

This policy applies to all tenant businesses as well as to all persons associated in any way with the tenant business. This policy covers all tenant paid and unpaid employees, contractors, consultants, delivery/receiving personnel and others.

CONTROL OF NONRADIOACTIVE HAZARDOUS MATERIALS

CONTENTS

1. Purpose
2. Requirements
 - 2.1 Radioactive Material Policy
 - 2.2 Tenant Responsibilities
 - 2.3 Shipping and Receiving
 - 2.4 Storage
3. Definitions
 - 3.1 Nonradioactive Hazardous Materials
 - 3.2 Hazardous Properties and/or Conditions
 - 3.3 Nonradioactive Materials
4. Guidelines for Handling Hazardous Waste
 - 4.1 Waste Handling Practices
 - 4.2 Handling Practices for Recyclable Oil

1. **PURPOSE**

This section establishes the requirements and responsibilities for implementing a nonradioactive hazardous material control program for the **Idaho Innovation Center /Technology Center** and for **all tenant businesses**. This program applies to the acquisition, use, shipping, receiving, storage and disposal of nonradioactive hazardous materials, and must comply with the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Superfund Amendments and Re-authorization Act, the Occupational Safety and Health Act, the Comprehensive Environmental Response, Compensation, and Liability Act, 49 CFR 172, and other references specified herein.

2. **REQUIREMENTS**

2.1 Radioactive material policy:

No radioactive material that exceeds amounts described in 10 CFR 20 shall be received, handled, and/or generated in and/or at the Idaho Innovation Center.

2.2 Tenant Responsibilities

Tenant Managers Shall:

- a. Prior to the receipt, handling, and/or generating of non-radioactive hazardous waste and/or material, the tenant must submit in writing to the incubator manager the nature and conditions of such hazardous waste. The incubator manager must give written approval that tenant activities in any way related to hazardous material are authorized prior to the receipt, handling, and/or generating of non-radioactive hazardous waste and/or material.
- b. Implement a written, auditable Nonradioactive Hazardous Materials Program in compliance with 29 CFR 1900.1200. The program shall provide for the acquisition, shipping, receiving, storage, and disposal of nonradioactive hazardous materials in accordance with all local, state and federal requirements and incubator policies.
- c. Maintain an inventory of hazardous materials present in work area, including identifying health and safety risks associated therewith, and enforce the necessary precautions to limit the hazard of such materials.
- d. Ensure that employees who work with nonradioactive hazardous materials are trained for such work, and that proper precautions are taken to avoid adverse exposure.
- e. Ensure that all hazardous materials have information available on each container in accordance with labeling requirements.
- f. Maintain a material safety data sheet file for nonradioactive hazardous materials that corresponds to the inventory.

- g. Provide hazard warnings regarding toxicity, flammability, and chemical reactivity either directly on the container or in a manner immediately retrievable by the user or emergency response personnel.
- h. Provide information on the date of receipt, job or project title, and responsible manager within the general area where the nonradioactive hazardous materials are located.
- i. Maintain an inventory of nonradioactive hazardous materials which will be available for inspection by the Incubator Manager upon reasonable notice.
- j. Implement a hazardous materials incident contingency plan in compliance with 29 CFR 1910.120. Implementation shall include communication with local response agencies for assistance in emergency situations.
- k. Comply with all inventory and spill reporting requirements under 40 CFR 300, 355, and 370.

2.3 Shipping and Receiving

- a. Inspect all received nonradioactive hazardous materials for condition and integrity of the packaging.
- b. Report any transportation or packaging violations to the incubator manager.
- c. Affix appropriate labels and warnings to nonradioactive hazardous materials as they are received.

2.4 Storage

IIC/BCTC tenants storing nonradioactive hazardous materials shall:

- a. Store nonradioactive hazardous materials per local, state, and federal requirements.
- b. Follow manufactures recommended "Shelf Life" where applicable for any material that ages to form chemically reactive products, e.g., peroxide-forming chemicals.
- c. Ensure that information concerning chemical types, nature of the hazard, and quantities present in each area is available for emergency response personnel.
- d. Maintain good chemical and laboratory housekeeping.
- e. Dispose of hazardous materials whose storage time exceeds the shelf life.
- f. Develop spill control plans where hazardous materials are stored.

3.0 DEFINITIONS

- 3.1 **Nonradioactive Hazardous Materials** - substances having a hazardous characteristic, substances identified as hazardous in a list, or in some instances substances containing an element identified as hazardous but not radioactive, in one or more of the

following regulations:

- 29 CFR 1910 and 1926
- 40 CFR 240 through 280
- 40 CFR 300 through 310
- 40 CFR 355 through 372
- 40 CFR 702 through 799
- 49 CFR 172

3.2 Some of the properties or conditions that cause materials to be listed as "hazardous" are as follows:

- a. Toxic - A substance which at a specified dose causes harmful effects to living tissue, organs, or systems when ingested, inhaled, contacted, or absorbed through the skin.
- b. Flammable - A material that will ignite easily and burn rapidly.
- c. Chemically Reactive - A substance susceptible to release of energy due to detonation, explosion, decomposition, or chemical change.
- d. Pyrophoric - A material that undergoes spontaneous ignition below 54.4 degrees C (130 degrees F).
- e. Pathogenic - A substance producing or capable of producing disease.
- f. Corrosive - A material that burns, irritates, or destructively attacks organic tissues.
- g. Explosive - A compound that can detonate or deflagrate as a result of shock or heat.
- h. Mutagenic - A substance that increases the frequency of permanent change in genetic material.
- I. Carcinogenic - A substance that produces abnormal cell growth.
- j. Teratogenic - A substance that may cause developmental malformations, e.g., biological monstrosities.
- k. Asphyxiant - A gas that can displace air and deprive organisms of oxygen.

3.3 Nonradioactive materials: Substances that do not exceed the amounts described in 10 CFR 20. The following has been deleted from the policy:

4. Guidelines for Handling Hazardous Waste

- 4.1 Waste Handling Practices
- 4.2 Handling Practices for Recyclable Oil

4. GUIDELINES FOR HANDLING HAZARDOUS WASTE

4.1 Waste Handling Practices:

- a. Label containers with red Hazardous Waste labels before adding any waste.
- b. Don't date the Hazardous Waste label - the date space on the label indicated the date the waste is removed from your lab for disposal.
- c. Remove a number label from the inventory booklet and affix it to the waste

- container.
- d. Keep a current record of the waste added to the container on the inventory with the same number as the container. Be accurate, specific, and complete. Instead of "heavy metals in acid" put "PB 20 ppm, AS 50 ppm in .05M HN03". Be sure and put the pH of the final content in the space provided.
 - e. When possible, refrain from mixing wastes. When it is not possible, only mix wastes that are compatible. Mixing wastes almost always increases the cost of disposal.
 - f. Keep a lid on your waste. The only time a waste container should be open is while waste is being added.
 - g. Keep outside of waste containers clean.
 - h. A piece of tape will be placed over the lid of waste container each time waste it is inventoried. If more waste is added to the container after inventory has been performed, remove tape from across the lid and throw the tape away.
 - i. DOT regulations prohibit the use of certain containers for waste.

4.2 Handling Practices for Recyclable Oil:

- a. Put a number sticker on the oil container.
- b. Do NOT put a hazardous waste label on the container, use a Recyclable Oil Label.
- c. Enter complete information in the waste inventory booklet. BE as complete a possible (e.g. recyclable silicon based oil from vacuum rough pump).
- d. Used/Unused oils that are acceptable for recycle are:
 - 1. Use or off-specification (unused) motor oils with viscosities up to and including 90 weight oil.
 - 2. Used or unused mineral oils.
 - 3. Used or unused hydraulic oils.
 - 4. Used or unused water soluble cutting oils; these oils must be handled separately.
 - 5. Silicone-based synthetic oils.
 - 6. Used and unused fuel oils (No. 1, No. 2, and No. 3), as well as used and unused diesel fuel (No. 1 and No. 2) - Note: the oil must be thin enough to pump without preheating.
- e. These oils must not contain: (Samples may be required by the recycle facility prior to acceptance)
 - 1. Greater than 1000 ppm of total halogens
 - 2. Greater than or equal to 50 ppm polychlorinated biphenyl (PCB's).
 - 3. Greater than 10% by volume, of basic sediments and water.
 - 4. Added hazardous waste, including but not limited to, paint thinners, gasoline, solvents, corrosives, and acids.
 - 5. Phosphorus.
 - 6. Phosphate ester or phosphate diester synthetic oil.
 - 7. Radioactive material.