

**STATE OF ALASKA  
DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES  
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**GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT FOR BUILDINGS**

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## **ACKNOWLEDGMENT**

"The State of Alaska, General Conditions of the Construction Contract for Buildings" is based on the "Standard General Conditions of the Construction Contract" as published by the National Society of Professional Engineers (document number 1910-8, 1983 edition) on behalf of the Engineers Joint Construction Documents Committee. Portions of the NSPE General Conditions are reprinted herein by the express permission of NSPE. Modifications to the NSPE text are made to provide for State laws, regulations, and established procedures.

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## **ARTICLE 1 - DEFINITIONS**

Wherever used in the Contract Documents the following terms, or pronouns in place of them, are used, the intent and meaning, unless a different intent or meaning is clearly indicated, shall be interpreted as set forth below.

The titles and headings of the articles, sections, and subsections herein are intended for convenience of reference.

Terms not defined below shall have their ordinary accepted meanings within the context which they are used. Words which have a well-known technical or trade meaning when used to describe work, materials or equipment shall be interpreted in accordance with such meaning. Words defined in Article 1 are to be interpreted as defined.

**Addenda** - All clarifications, corrections, or changes issued graphically or in writing by the DEPARTMENT after the Advertisement but prior to the opening of Proposals.

**Advertisement** - The public announcement, as required by law, inviting bids for Work to be performed or materials to be furnished.

**Application for Payment** - The form provided by the DEPARTMENT which is to be used by the CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

**Approved or Approval** - 'Approved' or 'Approval' as used in this contract document shall mean that the Department has received a document, form or submittal from the contractor and that the Department has taken "No exceptions" to the item submitted. Unless the context clearly indicates otherwise, approved or approval shall not mean that the Department approves of the methods or means, or that the item or form submitted meets the requirements of the contract or constitutes acceptance of the Contractor's work. Where approved or approval means acceptance, then such approval must be set forth in writing and signed by the contracting officer or his designee.

**Architect** - Where used in the contract documents, "ARCHITECT" shall mean the DEPARTMENT'S ENGINEER.

**Architect/Engineer** - Where used in the contract documents, "ARCHITECT/ENGINEER" shall mean the DEPARTMENT'S ENGINEER.

**A.S** - Initials which stand for Alaska Statute.

**Award** - The acceptance, by the DEPARTMENT, of the successful bid.

**Bid Bond** - A type of Proposal Guaranty.

**Bidder** - Any individual, firm, corporation or any acceptable combination thereof, or joint venture submitting a bid for the advertised Work.

**Calendar Day** - Every day shown on the calendar, beginning and ending at midnight.

**Change Order** - A written order by the DEPARTMENT directing changes to the Contract Documents, within their general scope.

**Consultant** - The person, firm, or corporation retained directly by the DEPARTMENT to prepare Contract Documents, perform construction administration services, or other Project related services.

**Contingent Sum Work Item** - When the bid schedule contains a Contingent Sum Work Item, the Work covered shall be performed only upon the written Directive of the Project Manager. Payment shall be made as provided in the Directive.

**Contract** - The written agreement between the DEPARTMENT and the CONTRACTOR setting forth the obligations of the parties and covering the Work to be performed, all as required by the Contract Documents.

**Contract Documents** - The Contract form, Addenda, the bidding requirements and CONTRACTOR's bid (including all appropriate bid tender forms), the bonds, the Conditions of the Contract and all other Contract requirements, the Specifications, and the Drawings furnished by the DEPARTMENT to the CONTRACTOR, together with all Change Orders and documents approved by the Contracting Officer, for inclusion, modifications and supplements issued on or after the Effective Date of the Contract.

**Contracting Officer** - The person authorized by the Commissioner to enter into and administer the Contract on behalf of the DEPARTMENT. He has authority to make findings, determinations and decisions with respect to the Contract and, when necessary, to modify or terminate the Contract. The Contracting Officer is identified on the construction Contract.

**CONTRACTOR** - The individual, firm, corporation or any acceptable combination thereof, contracting with the DEPARTMENT for performance of the Work.

**Contract Price** - The total moneys payable by the DEPARTMENT to the CONTRACTOR under the terms of the Contract Documents.

**Contract Time** - The number of Calendar Days following issuance of Notice-to-Proceed in which the project shall be rendered Substantially Complete, or if specified as a calendar date, the Substantial Completion date specified in the Contract Documents

**Controlling Item** - Any feature of the Work on the critical path of a network schedule.

**Defective** - Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents.

**DEPARTMENT** - The Alaska Department of Transportation and Public Facilities. References to "Owner", "State", "Contracting Agency", mean the DEPARTMENT.

**Directive** - A written communication to the CONTRACTOR from the Contracting Officer interpreting or enforcing a Contract requirement or ordering commencement of an item of Work.

**Drawings** - The Drawings which show the character and scope of the Work to be performed and which have been furnished by the DEPARTMENT or the DEPARTMENT's Consultant and are by reference made a part of the Contract Documents.

**ENGINEER** - The DEPARTMENT'S authorized representative of the Contracting Officer, as defined in the DEPARTMENT'S *delegation of authority letter* to be issued after notice-to-proceed, who is responsible for administration of the contract.

**Equipment** - All machinery together with the necessary supplies for upkeep and maintenance, and also tools and apparatus necessary for the proper construction and acceptable completion of the work.

**Final Acceptance** - The DEPARTMENT's written acceptance of the Work following Final Completion and the performance of all Contract requirements by the CONTRACTOR.

**Final Completion** - The Project (or specified part thereof) has progressed to the point that all required Work is complete as determined by the Contracting Officer.

**Furnish** - To procure, transport, and deliver to the project site materials, labor, or equipment, for installation or use on the project.

**General Requirements** - Sections of Division 1 of the Specifications which contain administrative and procedural requirements as well as requirements for temporary facilities which apply to Specification Divisions 2 through 16.

**Holidays** - In the State of Alaska, Legal Holidays occur on:

1. New Years Day - January 1
2. Martin Luther King's Birthday - Third Monday in January
3. President's Day - Third Monday in February
4. Seward's Day - Last Monday in March
5. Memorial Day - Last Monday in May
6. Independence Day - July 4
7. Labor Day - First Monday in September
8. Alaska Day - October 18
9. Veteran's Day - November 11
10. Thanksgiving Day - Fourth Thursday in November
11. Christmas Day - December 25
12. Every Sunday
13. Every day designated by public proclamation by the President of the United States or the Governor of the State as a legal Holiday.

If any Holiday listed above falls on a Saturday, Saturday and the preceding Friday are both legal Holidays. If the Holiday should fall on a Sunday, except (12) above, Sunday and the following Monday are both legal Holidays. See Title 44, Alaska Statutes.

**Inspector** - The Engineer's authorized representative assigned to make detailed observations relating to contract performance.

**Install** - Means to build into the Work, ready to be used in complete and operable condition and in compliance with Contract Documents.

**Interim Work Authorization** - A written order by the Engineer initiating changes to the Contract, within its general scope, until a subsequent Change Order is executed.

**Invitation for Bids** - A portion of the bidding documents soliciting bids for the Work to be performed.

**Laboratory** - The official testing laboratories of the DEPARTMENT or such other laboratories as may be designated by the Engineer or identified in the contract documents.

**Materials** - Any substances specified for use in the construction of the project.

**Notice of Intent to Award** - The written notice by the DEPARTMENT to all Bidders identifying the apparent successful Bidder and establishing the DEPARTMENT's intent to execute the Contract when all conditions required for execution of the Contract are met.

**Notice to Proceed** - A written notice to the CONTRACTOR to begin the Work and establishing the date on which the Contract Time begins.

**Payment Bond** - The security furnished by the CONTRACTOR and his Surety to guarantee payment of the debts covered by the bond.

**Performance Bond** - The security furnished by the CONTRACTOR and his Surety to guarantee performance and completion of the Work in accordance with the Contract.

**Preconstruction Conference** - A meeting between the CONTRACTOR and the Engineer, and other parties affected by the construction, to discuss the project before the CONTRACTOR begins work.

**Project** - The total construction, of which the Work performed under the Contract Documents is the whole or a part, where such total construction may be performed by more than one CONTRACTOR.



**Project Manager** - The authorized representative of the Contracting Officer who is responsible for administration of the Contract.

**Proposal** - The offer of a Bidder, on the prescribed forms, to perform the Work at the prices quoted.

**Proposal Guaranty** - The security furnished with a Proposal to guarantee that the bidder will enter into a Contract if his Proposal is accepted by the DEPARTMENT.

**Quality Assurance (QA)** - Where referred to in the technical specifications (Divisions 2 through 16), Quality Assurance refers to measures to be provided by the CONTRACTOR as specified.

**Quality Control (QC)** - Tests and inspections by the CONTRACTOR to insure the acceptability of materials incorporated into the work. QC test reports are used as a basis upon which to determine whether the Work conforms to the requirements of the Contract Documents and to determine its acceptability for payment.

**Regulatory Requirements** - Laws, rules, regulations, ordinances, codes and/or orders.

**Schedule of Values** - The DEPARTMENT's document, submitted by the CONTRACTOR and reviewed by the Contracting Officer, which shall serve as the basis for computing payment and for establishing the value of separate items of Work which comprise the Contract Price.

**Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the CONTRACTOR to illustrate material, equipment, fabrication, or erection for some portion of the Work. Where used in the Contract Documents, "Shop Drawings" shall also mean "Submittals".

**Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative and procedural details applicable thereto.

**Subcontractor** - An individual, firm, or corporation to whom the CONTRACTOR or any other Subcontractor sublets part of the Contract.

**Substantial Completion** - Although not fully completed, the Work (or a specified part thereof) has progressed to the point where, in the opinion of the Contracting Officer, as evidence by the DEPARTMENT's written notice, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended. The terms "Substantially Complete" and "Substantially Completed" as applied to any Work refer to Substantial Completion thereof.

**Supplemental Agreement** - A written agreement between the CONTRACTOR and the DEPARTMENT covering work that is not within the general scope of the Contract.

**Supplementary Conditions** - The part of the Contract Documents which amends or supplements these General Conditions.

**Supplier** - A manufacturer, fabricator, distributor, materialman or vendor of materials or equipment.

**Surety** - The corporation, partnership, or individual, other than the CONTRACTOR, executing a bond furnished by the CONTRACTOR.

**Traffic Control Plan (TCP)** - A drawing of one or more specific plans that detail the routing of pedestrian, and/or vehicular traffic through or around a construction area.

**Unit Price Work** - Work to be paid for on the basis of unit prices.

**Using Agency** - The entity who will occupy or use the completed Project.

**Utility** - The privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway or street drainage, and other similar commodities, including publicly owned fire and police signal systems, street lighting systems, and railroads which directly or indirectly serve the public or any part thereof. The term "utility" shall also mean the utility company, inclusive of any wholly owned or controlled subsidiary."

**Work** - Work is the act of, and the result of, performing services, furnishing labor, furnishing and incorporating materials and equipment into the Project and performing other duties and obligations, all as required by the Contract Documents. Such Work, however incremental, will culminate in the entire completed Project, or the various separately identifiable parts thereof.

## **ARTICLE 2 - AUTHORIZATION AND LIMITATIONS**

### **2.1 Authorities and Limitations**

- 2.1.1 The Contracting Officer alone, shall have the power to bind the DEPARTMENT and to exercise the rights, responsibilities, authorities and functions vested in the Contracting Officer by the Contract Documents. The Contracting Officer shall have the right to designate in writing authorized representatives to act for him. Wherever any provision of the Contract Documents specifies an individual or organization, whether governmental or private, to perform any act on behalf of or in the interest of the DEPARTMENT that individual or organization shall be deemed to be the Contracting Officer's authorized representative under this Contract but only to the extent so specified.
- 2.1.2 The CONTRACTOR shall perform the Work in accordance with any written order (including but not limited to instruction, direction, interpretation or determination) issued by an authorized representative in accordance with the authorized representative's authority to act for the Contracting Officer. The CONTRACTOR assumes all the risk and consequences of performing the Work in accordance with any order (including but not limited to instruction, direction, interpretation or determination) of anyone not authorized to issue such order, and of any order not in writing.
- 2.1.3 Should the Contracting Officer or his authorized representative designate Consultant(s) to act for the DEPARTMENT as provided for in Paragraph 2.1.1, the performance or nonperformance of the Consultant under such authority to act, shall not give rise to any contractual obligation or duty of the Consultant to the CONTRACTOR, any Subcontractor, any Supplier, or any other organization performing any of the Work or any Surety representing them.

### **2.2 Evaluations by Contracting Officer:**

- 2.2.1 The Contracting Officer will decide all questions which may arise as to:
- a. Quality and acceptability of materials furnished;
  - b. Quality and acceptability of Work performed;
  - c. Compliance with the schedule of progress;
  - d. Interpretation of Contract Documents;
  - e. Acceptable fulfillment of the Contract on the part of the CONTRACTOR.
- 2.2.2 In order to avoid cumbersome terms and confusing repetition of expressions in the Contract Documents the terms "as ordered", "as directed", "as required", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used it shall be understood as if the expression were followed by the words "the Contracting Officer".
- When such terms are used to describe a requirement, direction, review or judgment of the Contracting Officer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise).
- 2.2.3 The use of any such term or adjective shall not be effective to assign to the DEPARTMENT any duty of authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 2.3 or 2.4.

### **2.3 Means & Methods:**

The means, methods, techniques, sequences or procedures of construction, or safety precautions and the program incident thereto, and the failure to perform or furnish the Work in accordance with the Contract Documents are the sole responsibility of the CONTRACTOR.

### **2.4 Visits to Site/Place of Business:**

The Contracting Officer will make visits to the site and approved remote storage sites at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Contracting Officer may, at reasonable times, inspect that part of the plant or place of business of the CONTRACTOR or Subcontractor that is related to the performance of the Contract. Such observations or the lack of such observations shall in no way relieve the CONTRACTOR from his duty to perform the Work in accordance with the Contract Documents.

## **ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE**

### **3.1 Incomplete Contract Documents:**

The submission of a bid by the Bidder is considered a representation that the Bidder examined the Contract Documents to make certain that all sheets and pages were provided and that the Bidder is satisfied as to the conditions to be encountered in performing the Work. The DEPARTMENT expressly denies any responsibility or liability for a bid submitted on the basis of an incomplete set of Contract Documents.

### **3.2 Copies of Contract Documents:**

The DEPARTMENT shall furnish to the CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished, upon request, at the cost of reproduction.

### **3.3 Scope of Work:**

The Contract Documents comprise the entire Contract between the DEPARTMENT and the CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the Regulatory Requirements of the place of the Project.

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of the Contract to create in the public or any member thereof a third party benefit, or to authorize anyone not a party to this Contract to maintain a suit pursuant to the terms or provisions of the Contract.

### **3.4 Intent of Contract Documents:**

- 3.4.1 It is the intent of the Contract Documents to describe a functionally complete Project to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied, without any adjustment in Contract Price or Contract Time, whether or not specifically called for.
- 3.4.2 Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Regulatory Requirements of any governmental authority, whether such reference be specific or by implication, shall mean the edition stated in the Contract Documents or if not stated the latest standard specification, manual, code or Regulatory Requirements in effect at the time of Advertisement for the Project (or, on the Effective Date of the Contract if there was no Advertisement). However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the DEPARTMENT and the CONTRACTOR, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the DEPARTMENT or any of the DEPARTMENT's Consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 2.3 or 2.4.

### **3.5 Discrepancy in Contract Documents:**

- 3.5.1 Before undertaking the Work, the CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures, and dimensions shown thereon and all applicable field measurements. Work in the area by the CONTRACTOR shall imply verification of figures, dimensions and field measurements. If, during the above study or during the performance of the Work, the CONTRACTOR finds a conflict, error, discrepancy or omission in the Contract Documents, or a discrepancy between the Contract Documents and any standard specification, manual, code, or Regulatory Requirement which affects the Work, the CONTRACTOR shall promptly report such discrepancy in writing to the Contracting Officer. The CONTRACTOR shall obtain a written interpretation or clarification from the Contracting Officer before proceeding with any Work affected thereby. Any adjustment made by the CONTRACTOR without this

determination shall be at his own risk and expense. However, the CONTRACTOR shall not be liable to the DEPARTMENT for failure to report any conflict, error or discrepancy in the Contract Documents unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

### 3.5.2 Discrepancy - Order of Precedence:

When conflicts errors, or discrepancies within the Contract Documents exist, the order of precedence from most governing to least governing will be as follows:

- Contents of Addenda
- Supplementary Conditions
- General Conditions
- General Requirements
- Technical Specifications
- Drawings
- Recorded dimensions will govern over scaled dimensions
- Large scale details over small scale details
- Schedules over plans
- Architectural drawings over structural drawings Structural drawings over mechanical and electrical drawings

### 3.6 Clarifications and Interpretations:

The Contracting Officer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as the Contracting Officer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

### 3.7 Reuse of Documents:

Neither the CONTRACTOR nor any Subcontractor, or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the DEPARTMENT shall have or acquire any title to or ownership rights in any of the Contract Documents (or copies thereof) prepared by or for the DEPARTMENT and they shall not reuse any of the Contract Documents on extensions of the Project or any other project without written consent of the Contracting Officer.

Contract Documents prepared by the CONTRACTOR in connection with the Work shall become the property of the DEPARTMENT.

## **ARTICLE 4 - LANDS AND PHYSICAL CONDITIONS**

### **4.1 Availability of Lands:**

The DEPARTMENT shall furnish as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for use of the CONTRACTOR in connection with the Work. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the DEPARTMENT, unless otherwise provided in the Contract Documents. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. The CONTRACTOR shall provide all waste and disposal areas, including disposal areas for hazardous or contaminated materials, at no additional cost to the DEPARTMENT.

### **4.2 Visit to Site:**

The submission of a bid by the CONTRACTOR is considered a representation that the CONTRACTOR has visited and carefully examined the site and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Contract Documents.

### **4.3 Explorations and Reports:**

Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by the DEPARTMENT in preparation of the Contract Documents. The CONTRACTOR may for his purposes rely upon the accuracy of the factual data contained in such reports, but not upon interpretations or opinions drawn from such factual data contained therein or for the completeness or sufficiency thereof. Except as indicated in the immediately preceding sentence and in paragraphs 4.4 and 9.9, CONTRACTOR shall have full responsibility with respect to surface and subsurface conditions at the site.

### **4.4 Utilities:**

The horizontal and vertical locations of known underground utilities as shown or indicated by the Contract Documents are approximate and are based on information and data furnished to the DEPARTMENT by the owners of such underground utilities.

4.4.2 The CONTRACTOR shall have full responsibility for:

- a. Reviewing and checking all information and data concerning utilities.
- b. Locating all underground utilities shown or indicated in the Contract Documents which are affected by the Work.
- c. Coordination of the Work with the owners of all utilities during construction.
- d. Safety and protection of all utilities as provided in paragraph 6.17.
- e. Repair of any damage to utilities resulting from the Work in accordance with 4.4.4 and 4.5.

4.4.3 If Work is to be performed by any utility owner, the CONTRACTOR shall cooperate with such owners to facilitate the Work.

4.4.4 In the event of interruption to any utility service as a result of accidental breakage or as result of being exposed or unsupported, the CONTRACTOR shall promptly notify the utility owner and the Contracting Officer. If service is interrupted, repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until provisions for continued service has been approved by the local fire

authority.

#### **4.5 Damaged Utilities:**

When utilities are damaged by the CONTRACTOR, the utility owner shall have the choice of repairing the utility or having the CONTRACTOR repair the utility. In the following circumstances, the CONTRACTOR shall reimburse the utility owner for repair costs or provide at no cost to the utility owner or the DEPARTMENT, all materials, equipment and labor necessary to complete repair of the damage:

- a. When the utility is shown or indicated in the Contract Documents.
- b. When the utility has been located by the utility owner.
- c. When no locate was requested by the CONTRACTOR for utilities shown or indicated in the Contract Documents.
- d. All visible utilities.
- e. When the CONTRACTOR could have, otherwise, reasonably been expected to be aware of such utility.

#### **4.6 Utilities Not Shown or Indicated:**

If, while directly performing the Work, an underground utility is uncovered or revealed at the site which was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of, the CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by paragraph 6.19) identify the owner of such underground utility and give written notice thereof to that owner and to the Contracting Officer. The Contracting Officer will promptly review the underground utility to determine the extent to which the Contract Documents and the Work should be modified to reflect the impacts of the discovered utility. The Contract Documents will be amended or supplemented in accordance with paragraph 9.2 and to the extent necessary through the issuance of a change document by the Contracting Officer. During such time, the CONTRACTOR shall be responsible for the safety and protection of such underground utility as provided in paragraph 6.17. The CONTRACTOR may be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are directly attributable to the existence of any underground utility that was not shown or indicated in the Contract Documents and which the CONTRACTOR could not reasonably have been expected to be aware of.

#### **4.7 Survey Control:**

The DEPARTMENT will identify sufficient horizontal and vertical control data to enable the CONTRACTOR to survey and layout the Work. All survey work shall be performed under the direct supervision of a registered land surveyor when required by paragraph 7.8. Copies of all survey notes shall be provided to the DEPARTMENT at an interval determined by the Project Manager. The Project Manager may request submission on a weekly or longer period at his discretion. Any variations between the Contract Documents and actual field conditions shall be identified in the survey notes.



## **ARTICLE 5 - BONDS, INSURANCE, AND INDEMNIFICATION**

### **5.1 Delivery of Bonds:**

When the CONTRACTOR delivers the executed Contract to the Contracting Officer, the CONTRACTOR shall also deliver to the Contracting Officer such bonds as the CONTRACTOR may be required to furnish in accordance with paragraph 5.2.

### **5.2 Bonds:**

The CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount as shown on the Contract as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These bonds shall remain in effect for one year after the date of Final Acceptance and until all obligations under this Contract, except special guarantees as per 12.7, have been met. All bonds shall be furnished on forms provided by the DEPARTMENT (or copies thereof) and shall be executed by such Sureties as are authorized to do business in the State of Alaska. The Contracting Officer may at his option copy the Surety with notice of any potential default or liability.

### **5.3 Replacement of Bond and Surety:**

If the Surety on any bond furnished in connection with this Contract is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.2, or otherwise becomes unacceptable to the DEPARTMENT, or if any such Surety fails to furnish reports as to his financial condition as requested by the DEPARTMENT, the CONTRACTOR shall within five days thereafter substitute another bond and Surety, both of which must be acceptable to DEPARTMENT.

An individual Surety may be replaced by a corporate Surety during the course of the Contract period. If the Surety desires to dispose of the collateral posted, the DEPARTMENT may, at its option, accept substitute collateral.

### **5.4 Insurance Requirements:**

5.4.1 The CONTRACTOR shall provide evidence of insurance with a carrier or carriers satisfactory to the DEPARTMENT covering injury to persons and/or property suffered by the State of Alaska or a third party, as a result of operations which arise both out of and during the course of this Contract by the CONTRACTOR or by any Subcontractor. This coverage will also provide protection against injuries to all employees of the CONTRACTOR and the employees of any Subcontractor engaged in Work under this Contract. The delivery to the DEPARTMENT of a written 30 day notice is required before cancellation of any coverage or reduction in any limits of liability. Insurance carriers shall have an acceptable financial rating.

5.4.2 The CONTRACTOR shall maintain in force at all times during the performance of the work under this agreement the following policies and minimum limits of liability. Failure to maintain insurance may, at the option of the Contracting Officer, be deemed Defective Work and remedied in accordance with the Contract. Where specific limits and coverages are shown, it is understood that they shall be the minimum acceptable. The requirements of this paragraph shall not limit the CONTRACTOR's responsibility to indemnify under paragraph 5.5. Additional insurance requirements specific to this Contract are contained in the Supplementary Conditions, when applicable.

a. Workers' Compensation Insurance: The Contractor shall provide and maintain, for all employees of the Contractor engaged in work under this contract, Workers' Compensation Insurance as required by AS 23.30.045. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who provides services under this contract, to include:

1. Waiver of subrogation against the State and Employer's Liability Protection in the amount of \$500,000 each accident/\$500,000 each disease.

2. If the Contractor directly utilizes labor outside of the State of Alaska in the prosecution of the work, "Other States" endorsement shall be required as a condition of the contract.
  3. Whenever the work involves activity on or about navigable waters, the Workers' Compensation policy shall contain a United States Longshoreman's and Harbor Worker's Act endorsement, and when appropriate, a Maritime Employer's Liability (Jones Act) endorsement with a minimum limit of \$1,000,000.
- b. Comprehensive or Commercial General Liability Insurance: Such insurance shall cover all operations by or on behalf of the CONTRACTOR and provide insurance for bodily injury and property damage liability including coverage for:

premises and operations; products and completed operations; contractual liability insuring obligations assumed under paragraph 5.5, Indemnification; broad form property damage; and personal injury liability.

The minimum limits of liability shall be:

1. If the CONTRACTOR carries a *Comprehensive General Liability* policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage and Personal Injury Liability of:  
\$1,000,000 each occurrence  
\$2,000,000 aggregate
2. If the CONTRACTOR carries a *Commercial General Liability* policy, the limits of liability shall not be less than:  
\$1,000,000 each occurrence (Combined Single Limit for bodily injury and property damage)  
\$1,000,000 for Personal Injury Liability  
  
\$2,000,000 aggregate for Products-Completed Operations  
\$2,000,000 general aggregate

The State of Alaska, DEPARTMENT of Transportation and Public Facilities shall be named as an "Additional Insured" under all liability coverages listed above.

- c. Automobile Liability Insurance:  
Such insurance shall cover all owned, hired and non-owned vehicles and provide coverage not less than that of the Business Automobile Policy in limits not less than the following:

\$1,000,000 each occurrence  
(Combined Single Limit for bodily injury and property damage.)

- d. Builder's Risk Insurance:  
Coverage shall be on an "All Risk" completed value basis including "quake and flood" and protect the interests of the DEPARTMENT, the CONTRACTOR and his Subcontractors. Coverage shall include all materials, supplies and equipment that are intended for specific installation in the Project while such materials, supplies and equipment are located at the Project site, in transit from port of arrival to job site and while temporarily located away from the Project site.

In addition to providing the above coverages the CONTRACTOR shall ensure that Subcontractors provide insurance coverages as noted in clauses a., b., and c. of this subparagraph. Builders Risk Insurance will only be required of subcontractors if so stated in the Supplementary Conditions.

- e. Other Coverages:  
As specified in the Supplementary Conditions.

- 5.4.3 In addition to providing the above coverages the Contractor shall, in any contract or agreement with subcontractors performing work, require that all indemnities and waivers of subrogation it obtains, and that any stipulation to be named as an additional insured it obtains, also be extended to waive rights of subrogation against the State of Alaska and to add the State of Alaska as additional named indemnitee and as additional insured.

Evidence of insurance shall be furnished to the Department prior to the award of the contract. Such evidence, executed by the carrier's representative and issued to the Department, shall consist of a certificate of insurance or the policy declaration page with required endorsements attached thereto which denote the type, amount, class of operations covered, effective (and retroactive) dates, and dates of expiration. Acceptance by the Department of deficient evidence does not constitute a waiver of contract requirements.

When a certificate of insurance is furnished, it shall contain the following statement:

"This is to certify that the policies described herein comply with all aspects of the insurance requirements of (Project Name and Number)"

### **5.5 Indemnification:**

The CONTRACTOR shall indemnify, save harmless, and defend the DEPARTMENT, its agents and its employees from any and all claims, actions, or liabilities for injuries or damages sustained by any person or property arising directly or indirectly from the construction or the CONTRACTOR's performance of this Contract; however, this provision has no effect if, but only if, the sole proximate cause of the injury or damage is the DEPARTMENT's negligence.

## **ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES**

### **6.1 Supervision of Work:**

The CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. All Work under this Contract shall be performed in a skillful and workmanlike manner. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction.

### **6.2 Superintendence by CONTRACTOR:**

The CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent. The Contracting Officer shall be advised in writing of the superintendent's name, local address, and telephone number. This written advice is to be kept current until Final Acceptance by the DEPARTMENT. The superintendent will be the CONTRACTOR's representative at the site and shall have full authority to act and sign documents on behalf of the CONTRACTOR.

All communications given to the superintendent shall be as binding as if given to the CONTRACTOR. The CONTRACTOR shall cooperate with the Contracting Officer in every way possible.

### **6.3 Character of Workers:**

The CONTRACTOR shall provide a sufficient number of competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. The CONTRACTOR shall at all times maintain good discipline and order at the site. The Contracting Officer may, in writing, require the CONTRACTOR to remove from the Work any employee the Contracting Officer deems incompetent, careless, or otherwise detrimental to the progress of the Work, but the Contracting Officer shall have no duty to exercise this right.

### **6.4 CONTRACTOR to Furnish:**

Unless otherwise specified in the General Requirements, the CONTRACTOR shall furnish and assume full responsibility for all materials, equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance testing, start-up and completion of the Work.

### **6.5 Materials and Equipment:**

All materials and equipment shall be of specified quality and new, except as otherwise provided in the Contract Documents. If required by the Contracting Officer, the CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the DEPARTMENT or any of the DEPARTMENT's Consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraphs 2.3 or 2.4.

### **6.6 Anticipated Schedules:**

- 6.6.1 Within fourteen (14) calendar days after the date of the Notice to Proceed, the CONTRACTOR shall submit to the Contracting Officer for review an anticipated progress schedule indicating the starting and completion dates of the various stages of the Work. No individual stage of work shall exceed fourteen (14) calendar days.

- 6.6.2 Within twenty one (21) days after the date of the Notice to Proceed, the CONTRACTOR shall submit to the Contracting Officer for review an anticipated schedule of Shop Drawing submissions
- 6.6.3 Prior to submitting the CONTRACTOR's first Application for Payment, the CONTRACTOR shall submit for review and approval:

Anticipated Schedule of Values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by the CONTRACTOR at the time of submission.

#### **6.7 Finalizing Schedules:**

Prior to processing the first Application for Payment the Contracting Officer and the CONTRACTOR will finalize schedules required by paragraph 6.6. The finalized progress schedule will be acceptable to the DEPARTMENT as providing information related to the orderly progression of the Work to completion within the Contract Time; but such acceptance will neither impose on the DEPARTMENT nor relieve the CONTRACTOR from full responsibility for the progress or scheduling of the Work. If accepted, the finalized schedule of Shop Drawing and other required submissions will be acknowledgment by the DEPARTMENT as providing a workable arrangement for processing the submissions. If accepted, the finalized Schedule of Values will be acknowledgment by the DEPARTMENT as an approximation of anticipated value of Work accomplished over the anticipated Contract Time. Receipt and acceptance of a schedule submitted by the CONTRACTOR shall not be construed to assign responsibility for performance or contingencies to the DEPARTMENT or relieve the CONTRACTOR of his responsibility to adjust his forces, equipment, and work schedules as may be necessary to insure completion of the Work within prescribed Contract Time. Should the prosecution of the Work be discontinued for any reason, the CONTRACTOR shall notify the Contracting Officer at least 24 hours in advance of resuming operations.

#### **6.8 Adjusting Schedules:**

Upon substantial changes to the schedule or upon request the CONTRACTOR shall submit to the Contracting Officer for acceptance (to the extent indicated in paragraph 6.7 and the General Requirements) adjustments in the schedules to reflect the actual present and anticipated progress of the Work.

#### **6.9 Substitutes or "Or-Equal" Items:**

- 6.9.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that substitution is limited or not permitted, materials or equipment of other Suppliers may be accepted by the Contracting Officer only if sufficient information is submitted by the CONTRACTOR which clearly demonstrates to the Contracting Officer that the material or equipment proposed is equivalent or equal in all aspects to that named. The procedure for review by the Contracting Officer will include the following as supplemented in the General Requirements.
- 6.9.2 Requests for review of substitute items of material and equipment will not be accepted by the Contracting Officer from anyone other than the CONTRACTOR.

- 6.9.3 If the CONTRACTOR wishes to furnish or use a substitute item of material or equipment, the CONTRACTOR shall make written application to the Contracting Officer for Approval thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as the specified. The application will state that the evaluation and Approval of the proposed substitute will not delay the CONTRACTOR's timely achievement of Substantial or Final Completion, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the DEPARTMENT for Work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty.
- 6.9.4 All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the DEPARTMENT in evaluating the proposed substitute. The DEPARTMENT may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed substitute. The Contracting Officer may reject any substitution request which the Contracting Officer determines is not in the best interest of the DEPARTMENT.
- 6.9.5 Substitutions shall be permitted during or after the bid period as allowed and in accordance with Document 00020 - Invitation for Bids, Document 00700 – General Conditions, and Document 01630 - Product Options and Substitutions.

#### **6.10 Substitute Means and Methods:**

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Contracting Officer, if the CONTRACTOR submits sufficient information to allow the Contracting Officer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the Contracting Officer will be similar to that provided in paragraph 6.9 as applied by the Contracting Officer and as may be supplemented in the General Requirements.

#### **6.11 Evaluation of Substitution:**

The Contracting Officer will be allowed a reasonable time within which to evaluate each proposed substitute. The Contracting Officer will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Contracting Officer's prior written Approval which will be evidenced by either a Change Order or a Shop Drawing Approved in accordance with Sections 6.20 and 6.21. The Contracting Officer may require the CONTRACTOR to furnish at the CONTRACTOR's expense a special performance guarantee or other Surety with respect to any substitute.

#### **6.12 Dividing the Work:**

The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

#### **6.13 Subcontractors:**

The CONTRACTOR may utilize the services of appropriately licensed Subcontractors on those parts of the Work which, under normal contracting practices, are performed by Subcontractors, in accordance with the following conditions:

- 6.13.1 The CONTRACTOR shall not award any Work to any Subcontractor without prior written Approval of the Contracting Officer. This Approval will not be given until the CONTRACTOR submits to the Contracting Officer a written statement concerning the proposed award to the Subcontractor which shall contain required Equal Employment Opportunity documents, evidence of insurance whose limits are acceptable to the CONTRACTOR, and an executed copy of the subcontract. All subcontracts shall contain provisions for prompt payment, release of retainage, and interest on late payment amounts and retainage as specified in A.S. 36.90.210. Contracts between subcontractors, regardless of tier, must also contain these provisions. No acceptance by the Contracting Officer of any such Subcontractor shall constitute a waiver of any right of the DEPARTMENT to reject Defective Work.
- 6.13.2 The CONTRACTOR shall be fully responsible to the DEPARTMENT for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions.
- 6.13.3 All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate written agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the DEPARTMENT and contains waiver provisions as required by paragraph 13.17 and termination provisions as required by Article 14.
- 6.13.4 Nothing in the Contract Documents shall create any contractual relationship between the DEPARTMENT and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the DEPARTMENT to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Regulatory Requirements. The DEPARTMENT will not undertake to settle any differences between or among the CONTRACTOR, Subcontractors, or Suppliers.
- 6.13.5 The CONTRACTOR and Subcontractors shall coordinate their work and cooperate with other trades so to facilitate general progress of Work. Each trade shall afford other trades every reasonable opportunity for installation of their work and storage of materials. If cooperative work of one trade must be altered due to lack of proper supervision, or failure to make proper provisions in time by another trade, such conditions shall be remedied by the CONTRACTOR with no change in Contract Price or Contract Time.
- 6.13.6 The CONTRACTOR shall include on his own payrolls any person or persons working on this Contract who are not covered by written subcontract, and shall ensure that all Subcontractors include on their payrolls all persons performing Work under the direction of the Subcontractor.

#### **6.14 Use of Premises:**

The CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project limits and approved remote storage sites and lands and areas identified in and permitted by Regulatory Requirements, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the DEPARTMENT by any such owner or occupant because of the performance of the Work, the CONTRACTOR shall hold the DEPARTMENT harmless.

#### **6.15 Structural Loading:**

The CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### **6.16 Record Documents:**

The CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Directives, Change Orders, Supplemental Agreements, and written interpretations and clarifications (issued pursuant to paragraph 3.6) in good order and annotated to show all changes made during construction. These record documents together with all Approved samples and a counterpart of all Approved Shop Drawings will be available to the Contracting Officer for reference and copying. Upon completion of the Work, the annotated record documents, samples and Shop Drawings will be delivered to the Contracting Officer. Record documents shall accurately record variations in the Work which vary from requirements shown or indicated in the Contract Documents.

#### **6.17 Safety and Protection:**

The CONTRACTOR alone shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- 6.17.1 All employees on the Work and other persons and organizations who may be affected thereby;
- 6.17.2 All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- 6.17.3 Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

The CONTRACTOR shall comply with all applicable Regulatory Requirements of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The CONTRACTOR shall notify owners of adjacent property and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the CONTRACTOR with no change in Contract Price or Contract Time except as stated in 4.6, except damage or loss attributable to unforeseeable causes beyond the control of and without the fault or negligence of the CONTRACTOR, including but not restricted to acts of God, of the public enemy or governmental authorities. The CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until Final Acceptance (except as otherwise expressly provided in connection with Substantial Completion).

#### **6.18 Safety Representative:**

The CONTRACTOR shall designate a responsible safety representative at the site. This person shall be the CONTRACTOR's superintendent unless otherwise designated in writing by the CONTRACTOR to the Contracting Officer.

#### **6.19 Emergencies:**

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the DEPARTMENT, is obligated to act to prevent threatened damage, injury or loss. The CONTRACTOR shall give the Contracting Officer prompt written notice if the CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the DEPARTMENT determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a change will be authorized by one of the methods indicated in Paragraph 9.2, as determined appropriate by the Contracting Officer.



## **6.20 Shop Drawings and Samples:**

- 6.20.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, the CONTRACTOR shall submit to the Contracting Officer for review and Approval in accordance with the accepted schedule of Shop Drawing submissions the required number of all Shop Drawings, which will bear a stamp or specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as the Contracting Officer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Contracting Officer to review the information as required.
- 6.20.2 The CONTRACTOR shall also submit to the Contracting Officer for review and Approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that the CONTRACTOR has satisfied CONTRACTOR's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.
- 6.20.3 Before submission of each Shop Drawing or sample the CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.
- 6.20.4 At the time of each submission the CONTRACTOR shall give the Contracting Officer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Contracting Officer for review and Approval of each such variation. All variations of the proposed Shop Drawing from that specified will be identified in the submission and available maintenance, repair and replacement service will be indicated. The submittal will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such variation, including costs of redesign and claims of other Contractors affected by the resulting change, all of which shall be considered by the DEPARTMENT in evaluating the proposed variation. If the variation may result in a change of Contract Time or Price, or Contract responsibility, and is not minor in nature; the CONTRACTOR must submit a written request for Change Order with the variation to notify the DEPARTMENT of his intent. The DEPARTMENT may require the CONTRACTOR to furnish at the CONTRACTOR's expense additional data about the proposed variation. The Contracting Officer may reject any variation request which the Contracting Officer determines is not in the best interest of the DEPARTMENT.

## **6.21 Shop Drawing and Sample Review:**

- 6.21.1 The Contracting Officer will review with reasonable promptness Shop Drawings and samples, but the Contracting Officer's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate acceptance of the assembly in which the item functions. The CONTRACTOR shall make corrections required by the Contracting Officer and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. The CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by the Contracting Officer on previous submittals.
- 6.21.2 The Contracting Officer's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless the CONTRACTOR has in writing advised the Contracting Officer of each such variation at the time of submission as required by paragraph 6.20.4. The Contracting Officer if he so determines, may give written Approval of each such variation by Change Order, except that, if the variation is minor and no Change Order has been requested a

specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review comments shall suffice as a modification. Approval by the Contracting Officer will not relieve the CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.20.3.

- 6.21.3 The DEPARTMENT shall be responsible for all DEPARTMENT review costs resulting from the initial submission and the fors resubmittal. The CONTRACTOR shall, at the discretion of the Contracting Agency, pay all review costs incurred by the DEPARTMENT as a result of any additional re-submittals.
- 6.21.4 Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to the Contracting Officer's review and Approval of the pertinent submission will be the sole expense and responsibility of the CONTRACTOR.

#### **6.22 Maintenance During Construction:**

The CONTRACTOR shall maintain the Work during construction and until Substantial Completion, at which time the responsibility for maintenance shall be established in accordance with paragraph 13.10.

#### **6.23 Continuing the Work:**

The CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the DEPARTMENT. No Work shall be delayed or postponed pending resolution of any disputes, disagreements, or claims except as the CONTRACTOR and the Contracting Officer may otherwise agree in writing.

#### **6.24 Consent to Assignment:**

The CONTRACTOR shall obtain the prior written consent of the Contracting Officer to any proposed assignment of any interest in, or part of this Contract. The consent to any assignment or transfer shall not operate to relieve the CONTRACTOR or his Sureties of any of his or its obligations under this Contract or the Performance Bonds. Nothing herein contained shall be construed to hinder, prevent, or affect an assignment of monies due, or to become due hereunder, made for the benefit of the CONTRACTOR's creditors pursuant to law.

#### **6.25 Use of Explosives:**

- 6.25.1 When the use of explosives is necessary for the prosecution of the Work, the CONTRACTOR shall exercise the utmost care not to endanger life or property, including new Work and shall follow all Regulatory Requirements applicable to the use of explosives. The CONTRACTOR shall be responsible for all damage resulting from the use of explosives.
- 6.25.2 All explosives shall be stored in a secure manner in compliance with all Regulatory Requirements, and all such storage places shall be clearly marked. Where no Regulatory Requirements apply, safe storage shall be provided not closer than 1,000 feet from any building, camping area, or place of human occupancy.
- 6.25.3 The CONTRACTOR shall notify each public utility owner having structures in proximity to the site of his intention to use explosives. Such notice shall be given sufficiently in advance to enable utility owners to take such steps as they may deem necessary to protect their property from injury. However, the CONTRACTOR shall be responsible for all damage resulting from the use of the explosives, whether or not, utility owners act to protect their property.

#### **6.26 CONTRACTOR's Records:**

- 6.26.1 Records of the CONTRACTOR and Subcontractors relating to personnel, payrolls, invoices of materials, and any and all other data relevant to the performance of this Contract, must be kept on a generally recognized accounting system. Such records must be available during normal work hours to the Contracting Officer for purposes of investigation to ascertain compliance with Regulatory Requirements and provisions of the Contract

Documents.

- 6.26.2 Payroll records must contain the name and address of each employee, his correct classification, rate of pay, daily and weekly number of hours of work, deductions made, and actual wages paid. The CONTRACTOR and Subcontractors shall make employment records available for inspection by the Contracting Officer and representatives of the U.S. and/or State Department of Labor and will permit such representatives to interview employees during working hours on the Project.
- 6.26.3 Records of all communications between the DEPARTMENT and the CONTRACTOR and other parties, where such communications affected performance of this Contract, must be kept by the CONTRACTOR and maintained for a period of three years from Final Acceptance. The DEPARTMENT or its assigned representative may perform an audit of these records during normal work hours after written notice to the CONTRACTOR.
- 6.27 Load Restrictions

The CONTRACTOR shall comply with all load restrictions as set forth in the "Administrative Permit Manual", and Title 17, Chapter 25, of the Alaska Administrative Code in the hauling of materials on public roads, beyond the limits of the project, and on all public roads within the project limits that are scheduled to remain in use upon completion of the project.

Overload permits may, at the discretion of the State, be issued for travel beyond the project limits for purposes of mobilization and/or demobilization. Issuance of such a permit will not relieve the CONTRACTOR of liability for damage which may result from the moving of equipment.

The operation of equipment of such weight or so loaded as to cause damage to any type of construction will not be permitted. No overloads will be permitted on the base course or surface course under construction. No loads will be permitted on a concrete pavement, base or structure before the expiration of the curing period. The CONTRACTOR shall be responsible for all damage done by his equipment.

## **ARTICLE 7 - LAWS AND REGULATIONS**

### **7.1 Laws to be Observed**

The CONTRACTOR shall keep fully informed of all federal and state Regulatory Requirements and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The CONTRACTOR shall at all times observe and comply with all such Regulatory Requirements, orders and decrees; and shall protect and indemnify the DEPARTMENT and its representatives against claim or liability arising from or based on the violation of any such Regulatory Requirement, order, or decree whether by the CONTRACTOR, Subcontractor, or any employee of either. Except where otherwise expressly required by applicable Regulatory Requirements, the DEPARTMENT shall not be responsible for monitoring CONTRACTOR's compliance with any Regulatory Requirements.

### **7.2 Permits, Licenses, and Taxes**

- 7.2.1 The CONTRACTOR shall procure all permits and licenses, pay all charges, fees and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the Work. As a condition of performance of this Contract, the CONTRACTOR shall pay all federal, state and local taxes incurred by the CONTRACTOR, in the performance of this Contract. Proof of payment of these taxes is a condition precedent to final payment by the DEPARTMENT under this Contract.
- 7.2.2 The CONTRACTOR's certification that taxes have been paid (as contained in the *Release of Contract*) will be verified with the Department of Revenue and Department of Labor, prior to final payment.
- 7.2.3 If any federal, state or local tax is imposed, charged, or repealed after the date of bid opening and is made applicable to and paid by the CONTRACTOR on the articles or supplies herein contracted for, then the Contract shall be increased or decreased accordingly by a Change Order.

### **7.3 Patented Devices, Materials and Processes**

If the CONTRACTOR employs any design, device, material, or process covered by letters of patent, trademark or copyright, the CONTRACTOR shall provide for such use by suitable legal agreement with the patentee or owner. The CONTRACTOR and the Surety shall indemnify and save harmless the DEPARTMENT, any affected third party, or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the DEPARTMENT for any costs, expenses, and damages which it may be obliged to pay by reason of any infringement, at any time during the prosecution or after the completion of the Work.

### **7.4 Compliance of Specifications and Drawings:**

If the CONTRACTOR observes that the Specifications and Drawings supplied by the DEPARTMENT are at variance with any Regulatory Requirements, CONTRACTOR shall give the Contracting Officer prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 9.2. as determined appropriate by the Contracting Officer. If the CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Regulatory Requirements, and without such notice to the Contracting Officer, the CONTRACTOR shall bear all costs arising therefrom; however, it shall not be the CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings supplied by the DEPARTMENT are in accordance with such Regulatory Requirements.

### **7.5 Accident Prevention:**

The CONTRACTOR shall comply with AS 18.60.075 and all pertinent provisions of the Construction Code Occupational Safety and Health Standards issued by the Alaska Department of Labor.

## **7.6 Sanitary Provisions:**

The CONTRACTOR shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees and DEPARTMENT representatives as may be necessary to comply with the requirements of the State and local Boards of Health, or of other bodies or tribunals having jurisdiction.

## **7.7 Business Registration:**

Comply with AS 08.18.011, as follows: "it is unlawful for a person to submit a bid or work as a contractor until he has been issued a certificate of registration by the Department of Commerce. A partnership or joint venture shall be considered registered if one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered."

## **7.8 Professional Registration and Certification:**

All craft trades, architects, engineers and land surveyors, electrical administrators, and explosive handlers employed under the Contract shall specifically comply with applicable provisions of AS 08.18, 08.48, 08.40, and 08.52. Provide copies of individual licenses within seven days following a request from the Contracting Officer.

## **7.9 Local Building Codes:**

The CONTRACTOR shall comply with AS 35.10.025 which requires construction in accordance with applicable local building codes to include the obtaining of required permits.

## **7.10 Air Quality Control:**

The CONTRACTOR shall comply with all applicable provisions of AS 46.03.04 as pertains to Air Pollution Control.

## **7.11 Archaeological or Paleontological Discoveries:**

When the CONTRACTOR's operation encounters prehistoric artifacts, burials, remains of dwelling sites, or paleontological remains, such as shell heaps, land or sea mammal bones or tusks, the CONTRACTOR shall cease operations immediately and notify the Contracting Officer. No artifacts or specimens shall be further disturbed or removed from the ground and no further operations shall be performed at the site until so directed. Should the Contracting Officer order suspension of the CONTRACTOR's operations in order to protect an archaeological or historical finding, or order the CONTRACTOR to perform extra Work, such shall be covered by an appropriate Contract change document.

## **7.12 Applicable Alaska Preferences:**

- 7.12.1 In determining the low bidder for State funded projects, a 5% bid preference has been given to "Alaska bidders", as required under AS 36.30.170. "Alaska bidder" means a person who:
- (1) holds a current Alaska business license;
  - (2) submits a bid for goods, services, or construction under the name as appearing on the person's current Alaska business license
  - (3) has maintained a place of business within the state staffed by the bidder or an employee of the bidder for a period of six months immediately preceding the date of the bid;
  - (4) is incorporated or qualified to do business under the laws of the state, is a sole proprietorship, and the proprietor is a resident of the state or is a partnership, and all partners are residents of the state; and
  - (5) if a joint venture, is composed entirely of ventures that qualify under (1) through (4), above.
- 7.12.2 In determining the low bidder for State funded projects, an "Alaska products" preference has been given as required under AS 36.30.326 - 36.30.332, when the bidder designates the use of Alaska products. The Bidder shall complete the Alaska Products Preference Worksheet per its instructions and submit it with the Bid

Proposal. If the successful Bidder/CONTRACTOR proposes to use an Alaska product and does not do so, a penalty will be assessed against the successful Bidder/CONTRACTOR in an amount equal to the product preference percentage granted to the successful Bidder/CONTRACTOR plus one percent multiplied by the total declared value of the Alaska products proposed but not used.

- 7.12.3 Pursuant to AS 36.15.050 and AS 36.30.322, "agricultural/wood" products harvested in Alaska shall be used in State funded projects whenever they are priced no more than seven percent above agricultural/wood products harvested outside the state and are of a like quality as compared with agricultural/wood products harvested outside the state, when such products are not utilized, the CONTRACTOR shall document the efforts he made towards obtaining agricultural/wood products harvested in Alaska and include in this documentation a written statement that he contacted the manufacturers and suppliers identified on the Department of Commerce and Economic Development's list of suppliers of Alaska forest products concerning the availability of agricultural/wood products harvested in Alaska and, if available, the product prices. The CONTRACTOR's use of agricultural/wood products that fail to meet the requirements of this section shall be subject to the provisions of paragraphs 12.6 through 12.9 relating to Defective Work.
- 7.12.4 The CONTRACTOR shall maintain records, in a format acceptable to the Contracting Officer, which establish the type and extent of "agricultural/wood" and "Alaska" products utilized. All record keeping and documentation associated with the requirements 7.12.2 and 7.12.3 of this paragraph, must be provided to the DEPARTMENT upon written request or as otherwise provided within the Contract Documents.

### **7.13 Wages and Hours of Labor:**

- 7.13.1 One certified copy of all payrolls shall be submitted weekly to the State Department of Labor and, upon request, to the Contracting Officer to assure to assure compliance with AS 36.05.040, *Filing Schedule of Employees Wages Paid and Other Information*. The CONTRACTOR shall be responsible for the submission of certified copies of payrolls of all Subcontractors. The certification shall affirm that the payrolls are current and complete, that the wage rates contained therein are not less than the applicable rates referenced in these Contract Documents, and that the classification set forth for each laborer or mechanic conforms with the Work he performed. The CONTRACTOR and his Subcontractors shall attend all hearings and conferences and produce such books, papers, and documents all as requested by the Department of Labor. Should federal funds be involved, the appropriate federal agency shall also receive a copy of the CONTRACTOR's certified payrolls. Regardless of project funding source, copies of all certified payrolls supplied to the State Department of Labor by the CONTRACTOR shall be supplied also to the Project Manager upon request, including submittals made by, or on behalf of, subcontractors.
- 7.13.2 The following labor provisions shall also apply to this Contract:
- a. The CONTRACTOR and his Subcontractors shall pay all employees unconditionally and not less than once a week;
  - b. wages may not be less than those stated under AS 36.05.010, regardless of the contractual relationship between the CONTRACTOR or Subcontractors and laborers, mechanics, or field surveyors;
  - c. the scale of wages to be paid shall be posted by the CONTRACTOR in a prominent and easily accessible place at the site of the Work;
  - d. the DEPARTMENT shall withhold so much of the accrued payments as is necessary to pay to laborers, mechanics, or field surveyors employed by the CONTRACTOR or Subcontractors the difference between
    1. the rates of wages required by the Contract to be paid laborers, mechanics, or field surveyors on the Work, and
    2. the rates of wages in fact received by laborers, mechanics or field surveyors.

- 7.13.3 Within three calendar days of award of a construction contract, the CONTRACTOR shall file a "Notice of Work" with the Department of Labor and shall pay all related fees. The Contracting Officer will not issue Notice to Proceed to the CONTRACTOR until such notice and fees have been paid to the State Department of Labor. Failure of the CONTRACTOR to file the Notice of Work and pay fees within this timeframe shall not constitute grounds for an extension of contract time or adjustment of contract price.

**7.14 Overtime Work Hours and Compensation:**

Pursuant to 40 U.S.C. 327-330 and AS 23.10.060 -.110, the CONTRACTOR shall not require nor permit any laborer or mechanic in any workweek in which he is employed on any Work under this Contract to work in excess of eight hours in any Calendar Day or in excess of forty 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 hours in any Calendar Day or in excess of forty hours in such workweek whichever is the greater number of overtime hours. In the event of any violation of this provision, the CONTRACTOR shall be liable to any affected employee for any amounts due and penalties and to the DEPARTMENT for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of this provision in the sum of \$10.00 for each Calendar Day on which such employee was required or permitted to be employed on such Work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by this paragraph.

## **ARTICLE 8 - OTHER WORK**

### **8.1 Related Work at Site:**

- 8.1.1 The DEPARTMENT reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Contract.
- 8.1.2 When separate contracts are let within the limits of the Project, the CONTRACTOR shall conduct his Work so as not to interfere with or hinder the work being performed by other contractors. The CONTRACTOR when working on the same Project with other contractors shall cooperate with such other contractors. The CONTRACTOR shall join his Work with that of the others in an acceptable manner and shall perform it in proper sequence to that of others.
- 8.1.3 If the fact that other such work is to be performed is identified or shown in the Contract Documents the CONTRACTOR shall assume all liability, financial or otherwise, in connection with this Contract and indemnify and save harmless the DEPARTMENT from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the CONTRACTOR because of the presence and operations of other contractors.
- 8.1.4 If the fact that such other work is to be performed was not identified or shown in the Contract Documents, written notice thereof will be given to the CONTRACTOR prior to starting any such other work. If the CONTRACTOR believes that such performance will require an increase in Contract Price or Contract Time, the CONTRACTOR shall notify the Contracting Officer of such required increase within fifteen (15) calendar days following receipt of the Contracting Officer's notice. Should the Contracting Officer find such increase(s) to be justified, a Change Order will be executed.

### **8.2 Access, Cutting, and Patching:**

The CONTRACTOR shall afford each utility owner and any other contractor who is a party to such a direct contract with the DEPARTMENT (or the DEPARTMENT, if the DEPARTMENT is performing the additional work with the DEPARTMENT's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with the work of others. The CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, the CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter such other work with the written consent of the Contracting Officer. The duties and responsibilities of the CONTRACTOR under this paragraph are for the benefit of other contractors to the extent that there are comparable provisions for the benefit of the CONTRACTOR in said direct contracts between the DEPARTMENT and other contractors.

### **8.3 Defective Work by Others:**

If any part of the CONTRACTOR's Work depends for proper execution or results upon the work of any such other contractor, utility owner, or the DEPARTMENT, the CONTRACTOR shall inspect and promptly report to the Contracting Officer in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. The CONTRACTOR's failure to so report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR's Work except for latent or nonapparent defects and deficiencies in the other work.

### **8.4 Coordination:**

If the DEPARTMENT contracts with others for the performance of other work at the site, Contracting Officer will have authority and responsibility for coordination of the activities among the various prime contractors.



## **ARTICLE 9 - CHANGES**

### **9.1 DEPARTMENT's Right to Change:**

Without invalidating the Contract and without notice to any Surety, the DEPARTMENT may, at any time or from time to time, order additions, deletions or revisions in the Work within the general scope of the Contract, including but not limited to changes:

- 9.1.1 In the Contract Documents;
- 9.1.2 In the method or manner of performance of the Work;
- 9.1.3 In State-furnished facilities, equipment, materials, services, or site;
- 9.1.4 Directing acceleration in the performance of the Work.

### **9.2 Authorization of Changes within the General Scope:**

Additions, deletions, or revisions in the Work within the general scope of the Contract as specified in 9.1 shall be authorized by one or more of following ways:

- 9.2.1 Directive (pursuant to paragraph 9.3)
- 9.2.2 A Change Order (pursuant to paragraph 9.4)
- 9.2.3 DEPARTMENT's acceptance of Shop Drawing variations from the Contract Documents as specifically identified by the CONTRACTOR as required by paragraph 6.20.4.

### **9.3 Directive:**

- 9.3.1 The Contracting Officer shall provide written clarification or interpretation of the Contract Documents (pursuant to paragraph 3.6).
- 9.3.2 The Contracting Officer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents.
- 9.3.3 The Contracting Officer may order the Contractor to correct Defective Work or methods which are not in conformance with the Contract Documents.
- 9.3.4 The Contracting Officer may direct the commencement or suspension of Work or emergency related Work (as provided in paragraph 6.19).
- 9.3.5 Upon the issuance of a Directive to the CONTRACTOR by the Contracting Officer, the CONTRACTOR shall proceed with the performance of the Work as prescribed by such Directive.
- 9.3.6 If the CONTRACTOR believes that the changes noted in a Directive may cause an increase in the Contract Price or an extension of Contract Time, the CONTRACTOR shall immediately provide written notice to the Contracting Officer depicting such increases before proceeding with the Directive, except in the case of an emergency. If the Contracting Officer finds the increase in Contract Price or the extension of Contract Time justified, a Change Order will be issued. If however, the Contracting Officer does not find that a Change Order is justified, the Contracting Officer may direct the CONTRACTOR to proceed with the Work. The CONTRACTOR shall cooperate with the Contracting Officer in keeping complete daily records of the cost of such Work. If a Change Order is ultimately determined to be justified, in the absence of agreed prices and unit prices, payment for such Work will be made on a "cost of the work basis" as provided in 10.4

#### **9.4 Change Order:**

A change in Contract Time, Contract Price, or responsibility may be made for changes within the scope of the Work by Change Order. Upon receipt of an executed Change Order, the CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents except as otherwise specifically provided. Changes in Contract Price and Contract Time shall be made in accordance with Articles 10 and 11. A Change Order shall be considered executed when it is signed by the DEPARTMENT.

#### **9.5 Shop Drawing Variations:**

Variations by shop drawings shall only be eligible for consideration under 9.4 when the conditions affecting the price, time, or responsibility are identified by the CONTRACTOR in writing and a request for a Change Order is submitted as per 6.20.4.

#### **9.6 Changes Outside the General Scope; Supplemental Agreement:**

Any change which is outside the general scope of the Contract, as determined by the Contracting Officer, must be authorized by a Supplemental Agreement signed by the appropriate representatives of the DEPARTMENT and the CONTRACTOR.

#### **9.7 Unauthorized Work:**

The CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in this Article 9, except in the case of an emergency as provided in paragraph 6.19 and except in the case of uncovering Work as provided in paragraph 12.4.2.

#### **9.8 Notification of Surety:**

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any bond to be given to a Surety, the giving of any such notice will be the CONTRACTOR's responsibility, and the amount of each applicable bond will be adjusted accordingly.

#### **9.9 Differing Site Conditions:**

- 9.9.1 The CONTRACTOR shall promptly, and before such conditions are disturbed (except in an emergency as permitted by paragraph 6.19), notify the Contracting Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract, and which could not have been discovered by a careful examination of the site, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. The Contracting Officer shall promptly investigate the conditions, and if the Contracting Officer finds that such conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or time required for, performance of this Contract, an adjustment shall be made and the Contract modified in writing accordingly. An adjustment in compensation shall be computed under Article 10.
- 9.9.2 Any claim for additional compensation by the CONTRACTOR under this clause shall be made in accordance with Article 15. In the event that the Contracting Officer and the CONTRACTOR are unable to reach an agreement concerning an alleged differing site condition, the CONTRACTOR will be required to keep an accurate and detailed record which will indicate the actual "cost of the work" done under the alleged differing site condition. Failure to keep such a record shall be a bar to any recovery by reason of such alleged differing site conditions. The Contracting Officer shall be given the opportunity to supervise and check the keeping of such records.

9.10 **Interim Work Authorization:**

An Interim Work Authorization may be used to establish a change within the scope of the Work; however, only a Change Order shall establish associated changes in Contract Time and Price. Work authorized by Interim Work Authorization shall be converted to a Change Order. The basis of payment shall be as stated in the Interim Work Authorization, unless it states that the basis of payment has not been established and is to be negotiated, in which case the Cost of the Work shall be documented pursuant to Article 10.4, to establish a basis for negotiating a lump sum price for the Change Order.

## **ARTICLE 10 - CONTRACT PRICE; COMPUTATION AND CHANGE**

### **10.1 Contract Price:**

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to the CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without change in the Contract Price. The Contract Price may only be changed by a Change Order or Supplemental Agreement.

### **10.2 Claim for Price Change:**

Any claim for an increase or decrease in the Contract Price shall be submitted in accordance with the terms of Article 15, and shall not be allowed unless notice requirements of this Contract have been met.

### **10.3 Change Order Price Determination:**

The value of any Work covered by a Change Order for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- 10.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of subparagraphs 10.9.1 through 10.9.3, inclusive).
- 10.3.2 By mutual acceptance of a lump sum (fixed price) which includes overhead and profit. The lump sum (fixed price) shall be negotiated on the basis of the estimated "cost of the work" in accordance with Articles 10.4 and 10.5. The following maximum rates of cost markup (to cover both overhead and profit of the CONTRACTOR) shall be used in the negotiation of a Lump Sum Change Order:
  - a. For costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR's fee shall be twenty percent;
  - b. For costs incurred under paragraph 10.4.3, the CONTRACTOR's fee shall be ten percent; and if a subcontract is on the basis of "cost of the work" plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit for itself and all Subcontractors and multiple tiers thereof shall be fifteen percent of the cost incurred by the subcontractor actually performing the work;
  - c. No fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;
  - d. The amount of credit to be allowed by the CONTRACTOR to the DEPARTMENT for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's fee by an amount equal to twenty percent of the net decrease; and
  - e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 10.3.2.a through 10.3.2.d, inclusive
- 10.3.3 When 10.3.1 and 10.3.2 are inapplicable, on the basis of the "cost of the work" (determined as provided in paragraphs 10.4 and 10.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 10.6).
- 10.3.4 Before a Change Order or Supplemental Agreement is Approved, the CONTRACTOR shall submit cost or pricing data regarding the changed or extra Work. The CONTRACTOR shall certify that the data submitted is, to his best knowledge and belief, accurate, complete and current as of a mutually determined specified date and that such data will continue to be accurate and complete during the performance of the changed or extra Work.

#### 10.4 Cost of the Work:

The term "cost of the work" means the sum of all costs necessarily incurred and paid by the CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by the DEPARTMENT, such costs shall be in amount no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in subparagraph 10.5:

- 10.4.1 Payroll costs for employees in the direct employ of the CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by the DEPARTMENT and the CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include manual workers up through the level of foreman but shall not include general foremen, superintendents, and non-manual employees. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by the DEPARTMENT.
- 10.4.2 Cost of all materials and equipment furnished and incorporated or consumed in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to the CONTRACTOR unless the DEPARTMENT deposits funds with the CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to the DEPARTMENT. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the DEPARTMENT, and the CONTRACTOR shall make provisions so that they may be obtained.
- 10.4.3 Payments made by the CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by the DEPARTMENT, CONTRACTOR shall obtain competitive quotes from Subcontractors or Suppliers acceptable to the CONTRACTOR and shall deliver such quotes to the DEPARTMENT who will then determine which quotes will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of "cost of the work" plus a fee, the Subcontractor' "cost of the work" shall be determined in the same manner as the CONTRACTOR's "cost of work" as described in paragraphs 10.4 through 10.5; and the Subcontractor's fee shall be established as provided for under subparagraph 10.6.2 clause b. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 10.4.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed for services necessary for the completion of the Work.
- 10.4.5 Supplemental costs including the following:
  - a. The proportion of necessary transportation, travel and subsistence expenses of the CONTRACTOR's employees incurred in discharge of duties connected with the Work.
  - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of the CONTRACTOR.
  - c. Rentals of all construction equipment and machinery and the parts thereof whether rented from the CONTRACTOR or others in accordance with rental agreements Approved by the DEPARTMENT and the costs of transportation, loading, unloading, installation, dismantling and removal thereof - all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

For any machinery or special equipment (other than small tools) which has been authorized by the Project

Manager, the CONTRACTOR shall receive the rental rates in the current edition and appropriate volume of the "Rental Rate Blue Book for Construction Equipment", published by Dataquest, Inc., 1290 Ridder Park Drive, San Jose, CA 95131. Hourly rental rates shall be determined as follows:

*The established hourly rental rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments, both divided by 176, and multiplied by the area adjustment factor, plus the estimated hourly operating cost.*

The adjusted monthly rate is that resulting from application of the rate adjustment formula in order to eliminate replacement cost allowances in machine depreciation and contingency cost allowances.

Attachments shall not be included unless required for the time and materials work.

For equipment not listed in The Blue Book, the CONTRACTOR shall receive a rental rate as agreed upon before such work is begun. If agreement cannot be reached, the DEPARTMENT reserves the right to establish a rate based on similar equipment in the Blue Book or prevailing commercial rates in the area.

These rates shall apply for equipment used during the CONTRACTOR's regular shift of 10 hours per day. Where the equipment is used more than 10 hours per day, either on the CONTRACTOR's normal work or on time and materials, and either on single or multiple shifts, an overtime rate, computed as follows, shall apply:

*The hourly overtime rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments, both divided by 352, and multiplied by the area adjustment factor, plus the estimated hourly operating cost.*

Equipment which must be rented or leased specifically for work required under this section shall be authorized in writing by the Project Manager. The CONTRACTOR shall be paid invoice price plus 15%.

When it is necessary to obtain equipment from sources beyond the project limits exclusively for time and materials, work, the actual cost of transferring the equipment to the site of the work and return will be allowed as an additional item of expense. Where the move is made by common carrier, the move-in allowance will be limited to the amount of the freight bill or invoice. If the CONTRACTOR hauls the equipment with his own forces, the allowance will be limited to the rental rate for the hauling unit plus operator wages. In the event that the equipment is transferred under its own power, the moving allowance will be limited to one-half of the normal hourly rental rate plus operator's wages. In the event that the move-out is to a different location, payment will in no instance exceed the amount of the move-in. Move-in allowance shall not be made for equipment brought to the project for time and materials work which is subsequently retained on the project and utilized for completion of contract items, camp maintenance, or related work.

Equipment ordered to be on a stand-by basis shall be paid for at the stand-by rental rate for the number of hours in the CONTRACTOR'S normal work shift, but not to exceed 8 hours per day. The stand-by rental rate shall be computed as follows:

*The hourly stand-by rate shall be equal to the adjusted monthly rate for the basic equipment plus the adjusted monthly rate for applicable attachments, both divided by 352, all multiplied by the area adjustment factor.*

Time will be recorded to the nearest one-quarter hour for purposes of computing compensation to the CONTRACTOR for equipment utilized under these rates.

The equipment rates as determined above shall be full compensation, including overhead and profit, for providing the required equipment and no additional compensation will be made for other costs such as, but not limited to, fuels, lubricants, replacement parts or maintenance costs. Cost of repairs, both major and minor, as well as charges for mechanic's time utilized in servicing equipment to ready it for use prior to moving to the project and similar charges will not be allowed.

- d. Sales, consumer, use or similar taxes related to the Work, and for which the CONTRACTOR is liable, imposed by Regulatory Requirements.
- e. Deposits lost for causes other than negligence of the CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by the CONTRACTOR in connection with the performance and furnishing of the Work provided they have resulted from causes other than the negligence of the CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and Approval of the DEPARTMENT. No such losses, damages and expenses shall be included in the "cost of the work" for the purpose of determining the CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and the CONTRACTOR is placed in charge thereof, the CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraphs 10.6.2.a and 10.6.2.b.
- g. The cost of utilities, fuel and sanitary facilities at the site.
- h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
- I. Cost of premiums for additional bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by the DEPARTMENT in accordance with Article 5.

#### **10.5 Excluded Costs:**

The term "cost of the work" shall not include any of the following:

- 10.5.1 Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agency, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 or specifically covered by paragraph 10.4.4 all of which are to be considered administrative costs covered by the CONTRACTOR's fee.
- 10.5.2 Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the site.
- 10.5.3 Any part of CONTRACTOR's capital expenses including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
- 10.5.4 Cost of premiums for all bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 10.4.5.i above).
- 10.5.5 Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 10.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

## **10.6 CONTRACTOR's Fee:**

The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as follows.

- 10.6.1 A mutually acceptable fixed fee; or if none can be agreed upon.
- 10.6.2 A fee based on the following percentages of the various portions of the "cost of the work":
  - a. For costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR's fee shall be fifteen percent;
  - b. For costs incurred under paragraph 10.4.3, the CONTRACTOR's fee shall be ten percent; and if a subcontract is on the basis of "cost of the work" plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit for itself and all Subcontractors and multiple tiers thereof shall be fifteen percent of the cost incurred by the subcontractor actually performing the work;
  - c. No fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;
  - d. The amount of credit to be allowed by the CONTRACTOR to the DEPARTMENT for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR's fee by an amount equal to fifteen percent of the net decrease; and
  - e. When both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 10.6.2.a through 10.6.2.d, inclusive.

## **10.7 Cost Breakdown:**

Whenever the cost of any Work is to be determined pursuant to paragraphs 10.4 and 10.5, the CONTRACTOR will submit in a form acceptable to the DEPARTMENT an itemized cost breakdown together with supporting data.

## **10.8 Cash Allowances:**

It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to the Contracting Officer. CONTRACTOR agrees that:

- 10.8.1 The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and
- 10.8.2 CONTRACTOR's cost for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due the CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

## **10.9 Unit Price Work:**

- 10.9.1 Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Contract. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR will be made by the



DEPARTMENT in accordance with paragraph 10.10.

- 10.9.2 Each unit price will be deemed to include an amount considered by the CONTRACTOR to be adequate to cover the CONTRACTOR's overhead and profit for each separately identified item. If the "Basis of Payment" clause in the Contract Documents relating to any unit price in the bid schedule requires that the said unit price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract Documents.
- 10.9.3 Payment to the CONTRACTOR shall be made only for the actual quantities of Work performed and accepted or materials furnished, in conformance with the Contract Documents. When the accepted quantities of Work or materials vary from the quantities stated in the bid schedule, or change documents, the CONTRACTOR shall accept as payment in full, payment at the stated unit prices for the accepted quantities of Work and materials furnished, completed and accepted; except as provided below:
- a. When the quantity of Work to be done or material to be furnished under any item, for which the total cost of the item exceeds 10% of the total Contract Price, is increased by more than 25 percent of the quantity stated in the bid schedule, or change documents, either party to the Contract, upon demand, shall be entitled to an equitable unit price adjustment on that portion of the Work above 125 percent of the quantity stated in the bid schedule.
  - b. When the quantity of Work to be done or material to be furnished under any major item, for which the total cost of the item exceeds 10% of the total Contract Price, is decreased by more than 25 percent of the quantity stated in the bid schedule, or change documents either party to the Contract, upon demand, shall be entitled to an equitable price adjustment for the quantity of Work performed or material furnished, limited to a total payment of not more than 75 percent of the amount originally bid for the item.

**10.10 Determinations for Unit Prices:**

The Contracting Officer will determine the actual quantities and classifications of Unit Price Work performed by the CONTRACTOR. The Contracting Officer will review with the CONTRACTOR preliminary determinations on such matters before finalizing the costs and quantities on the Schedule of Values. The Contracting Officer's acknowledgment thereof will be final and binding on the CONTRACTOR, unless, within 10 days after the date of any such decisions, the CONTRACTOR delivers to the Contracting Officer written notice of intention to appeal from such a decision.

## **ARTICLE 11 - CONTRACT TIME; COMPUTATION AND CHANGE**

### **11.1 Commencement of Contract Time; Notice to Proceed:**

The Contract Time will commence to run on the day indicated in the Notice to Proceed.

### **11.2 Starting the Work:**

No Work on Contract items shall be performed before the effective date of the Notice to Proceed. The CONTRACTOR shall notify the Contracting Officer at least 24 hours in advance of the time actual construction operations will begin. The CONTRACTOR may request a limited Notice to Proceed after Award has been made, to permit him to order long lead materials which could cause delays in Project completion. However, granting is within the sole discretion of the Contracting Officer, and refusal or failure to grant a limited Notice to Proceed shall not be a basis for claiming for delay, extension of time, or alteration of price.

### **11.3 Computation of Contract Time:**

11.3.1 When the Contract Time is specified on a Calendar Day basis, all Work under the Contract shall be completed within the number of Calendar Days specified. The count of Contract Time begins on the day following receipt of the Notice to Proceed by the CONTRACTOR, if no starting day is stipulated therein.

Calendar Days shall continue to be counted against Contract Time until and including the date of Substantial Completion of the Work.

11.3.2 When the Contract completion time is specified as a fixed calendar date, it shall be the date of Substantial Completion.

11.3.3 The Contract Time shall be as stated on form 25D-9, Proposal.

### **11.4 Time Change:**

The Contract Time may only be changed by a Change Order or Supplemental Agreement.

### **11.5 Extension Due to Delays:**

The right of the CONTRACTOR to proceed shall not be terminated nor the CONTRACTOR charged with liquidated or actual damages because of delays to the completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including, but not restricted to the following: acts of God or of the public enemy, acts of the DEPARTMENT in its contractual capacity, acts of another contractor in the performance of a contract with the DEPARTMENT, floods, fires, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and delays of Subcontractors or Suppliers due to such causes. Any delay in receipt of materials on the site, caused by other than one of the specifically mentioned occurrences above, does not of itself justify a time extension, provided that the CONTRACTOR shall within twenty four (24) hours from the beginning of any such delay (unless the Contracting Officer shall grant a further period of the time prior to the date of final settlement of the Contract), notify the Contracting Officer in writing of the cause of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the Work when the findings of fact justify such an extension.

### **11.6 Essence of Contract:**

All time limits stated in the Contract Documents are of the essence of the Contract.

### **11.7 Reasonable Completion Time:**

It is expressly understood and agreed by and between the CONTRACTOR and the DEPARTMENT that the date of

beginning and the time for Substantial Completion of the Work described herein are reasonable times for the completion of the Work.

#### **11.8 Delay Damages:**

Whether or not the CONTRACTOR's right to proceed with the Work is terminated, he and his Sureties shall be liable for damages resulting from his refusal or failure to complete the Work within the specified time.

Liquidated and actual damages for delay shall be paid by the CONTRACTOR or his Surety to the DEPARTMENT in the amount as specified in the Supplementary Conditions for each Calendar Day the completion of the Work or any part thereof is delayed beyond the time required by the Contract, or any extension thereof. If a listing of incidents resulting from a delay and expected to give rise to actual or liquidated damages is not established by the Contract Documents, then the CONTRACTOR and his Surety shall be liable to the DEPARTMENT for any actual damages occasioned by such delay. The CONTRACTOR acknowledges that the liquidated damages established herein are not a penalty but rather constitute an estimate of damages that the DEPARTMENT will sustain by reason of delayed completion. These liquidated and actual damages are intended as compensation for losses anticipated to arise, and include those items enumerated in the Supplementary Conditions.

These damages will continue to run both before and after termination in the event of default termination. These liquidated damages do not cover excess costs of completion or DEPARTMENT costs, fees, and charges related to reprocurement. If a default termination occurs, the CONTRACTOR or his Surety shall pay in addition to these damages, all excess costs and expenses related to completion as provided by Article 14.2.5.

## **ARTICLE 12 - QUALITY ASSURANCE**

### **12.1 Warranty and Guaranty:**

The CONTRACTOR warrants and guarantees to the DEPARTMENT that all Work will be in accordance with the Contract Documents and will not be Defective. Prompt notice of all defects shall be given to the CONTRACTOR. All Defective Work, whether or not in place, may be rejected, corrected or accepted as provided for in this article.

### **12.2 Access to Work:**

The DEPARTMENT and the DEPARTMENT's representatives, testing agencies and governmental agencies with jurisdiction interests will have access to the Work at reasonable times for their observation, inspecting and testing. The CONTRACTOR shall provide proper and safe conditions for such access.

### **12.3 Tests and Inspections:**

12.3.1 The CONTRACTOR shall give the Contracting Officer timely notice of readiness of the Work for all required inspections, tests or Approvals.

12.3.2 If Regulatory Requirements of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, the CONTRACTOR shall assume full responsibility therefor, pay all costs in connection therewith and furnish the Contracting Officer the required certificates of inspection, testing or approval. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with DEPARTMENT's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for Approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by the CONTRACTOR. The DEPARTMENT may perform additional tests and inspections which it deems necessary to insure quality control. All such failed tests or inspections shall be at the CONTRACTOR's expense.

12.3.4 If any Work (including the work of others) that is to be inspected, tested or Approved is covered without written concurrence of the Contracting Officer, it must, if requested by the Contracting Officer, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense unless the CONTRACTOR has given the Contracting Officer timely notice of CONTRACTOR's intention to cover the same and the Contracting Officer has not acted with reasonable promptness in response to such notice.

12.3.5 Neither observations nor inspections, tests or Approvals by the DEPARTMENT or others shall relieve the CONTRACTOR from the CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

### **12.4 Uncovering Work:**

12.4.1 If any Work is covered contrary to the written request of the Contracting Officer, it must, if requested by the Contracting Officer, be uncovered for the Contracting Officer's observation and replaced at the CONTRACTOR's expense.

12.4.2 If the Contracting Officer considers it necessary or advisable that covered Work be observed inspected or tested, the CONTRACTOR, at the Contracting Officer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Contracting Officer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is Defective, the CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) and the DEPARTMENT shall be entitled to an appropriate decrease in the Contract Price. If, however, such Work is not found to be Defective, the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction.

#### **12.5 DEPARTMENT May Stop the Work:**

If the Work is Defective, or the CONTRACTOR fails to supply suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Contracting Officer may order the CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Contracting Officer to stop the Work shall not give rise to any duty on the part of the Contracting Officer to exercise this right for the benefit of the CONTRACTOR or any other party.

#### **12.6 Correction or Removal of Defective Work:**

If required by the Contracting Officer, the CONTRACTOR shall promptly, as directed, either correct all Defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Contracting Officer, remove it from the site and replace it with Work which conforms to the requirements of the Contract Documents. The CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

#### **12.7 One Year Correction Period:**

If within one year after the date of Substantial Completion of the relevant portion of the work or such longer period of time as may be prescribed by Regulatory Requirements or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be Defective, the CONTRACTOR shall promptly, without cost to the DEPARTMENT and in accordance with the Contracting Officer's written instructions, either correct such Defective Work, or, if it has been rejected by the Contracting Officer, remove it from the site and replace it with conforming Work. If the CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the DEPARTMENT may have the Defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by the CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service for the benefit of the DEPARTMENT before Substantial Completion of all the Work, the correction period for that item may begin on an earlier date if so provided in the Specifications or by Change Order. Provisions of this paragraph are not intended to shorten the statute of limitations for bringing an action.

#### **12.8 Acceptance of Defective Work:**

Instead of requiring correction or removal and replacement of Defective Work, the Contracting Officer may accept Defective Work, the CONTRACTOR shall bear all direct, indirect and consequential costs attributable to the Contracting Officer's evaluation of and determination to accept such Defective Work (costs to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the DEPARTMENT shall be entitled to an appropriate decrease in the Contract Price. If the DEPARTMENT has already made final payment to the CONTRACTOR, an appropriate amount shall be paid by the CONTRACTOR or his Surety to the DEPARTMENT.

## **12.9 DEPARTMENT May Correct Defective Work:**

If the CONTRACTOR fails within a reasonable time after written notice from the Contracting Officer to proceed to correct Defective Work or to remove and replace rejected Work as required by the Contracting Officer in accordance with paragraph 12.6, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if the CONTRACTOR fails to comply with any other provision of the Contract Documents, the DEPARTMENT may, after 7 days' written notice to the CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the DEPARTMENT shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, the Contracting Officer may exclude the CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto, take possession of the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or approved remote storage sites or for which the DEPARTMENT has paid the CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the Contracting Officer and his authorized representatives such access to the site as may be necessary to enable the Contracting Officer to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the DEPARTMENT in exercising such rights and remedies will be charged against the CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the DEPARTMENT shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the CONTRACTOR's Defective Work. The CONTRACTOR shall not be allowed an extension of time because of any delay in performance of the work attributable to the exercise, by the Contracting Officer, of the DEPARTMENT's rights and remedies hereunder.

## **ARTICLE 13 - PAYMENTS TO CONTRACTOR AND COMPLETION**

### **13.1 Schedule of Values:**

The Schedule of Values established as provided in paragraph 6.6 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Contracting Officer. Progress payments on account of Unit Price Work will be based on the number of units completed.

### **13.2 Preliminary Payments:**

Upon approval of the Schedule of Values the CONTRACTOR may be paid for direct costs substantiated by paid invoices and other prerequisite documents required by the General Requirements. Direct costs shall include the cost of bonds, insurance, approved materials stored on the site or at approved remote storage sites, deposits required by a Supplier prior to fabricating materials, and other approved direct mobilization costs substantiated as indicated above. These payments shall be included as a part of the total Contract Price as stated in the Contract.

### **13.3 Application for Progress Payment:**

The CONTRACTOR shall submit to the Contracting Officer for review an Application for Payment filled out and signed by the CONTRACTOR covering the Work completed as of the date of the Application for Payment and accompanied by such supporting documentation as is required by the Contract Documents. Progress payments will be made as the Work progresses on a monthly basis.

### **13.4 Review of Applications for Progress Payment:**

Contracting Officer will either indicate in writing a recommendation of payment or return the Application for Payment to the CONTRACTOR indicating in writing the Contracting Officer's reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Application for Payment.

### **13.5 Stored Materials and Equipment:**

If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, paid invoice or other documentation warranting that the DEPARTMENT has received the materials and equipment free and clear of all charges, security interests and encumbrances and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the DEPARTMENT's interest therein, all of which will be satisfactory to the Contracting Officer. No payment will be made for perishable materials that could be rendered useless because of long storage periods. No progress payment will be made for living plant materials until planted.

### **13.6 CONTRACTOR's Warranty of Title:**

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the DEPARTMENT no later than the time of payment free and clear of any claims, liens, security interests and further obligations.

### **13.7 Withholding of Payments:**

The DEPARTMENT may withhold or refuse payment for any of the reasons listed below provided it gives written notice of its intent to withhold and of the basis for withholding:

- 13.7.1 The Work is Defective, or completed Work has been damaged requiring correction or replacement, or has been installed without Approval of Shop Drawings, or by an unapproved Subcontractor, or for unsuitable storage of materials and equipment.

- 13.7.2 The Contract Price has been reduced by Change Order,
- 13.7.3 The DEPARTMENT has been required to correct Defective Work or complete Work in accordance with paragraph 12.9.
- 13.7.4 The DEPARTMENT's actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1.a through 14.2.1.k inclusive.
- 13.7.5 Claims have been made against the DEPARTMENT or against the funds held by the DEPARTMENT on account of the CONTRACTOR's actions or inactions in performing this Contract, or there are other items entitling the DEPARTMENT to a set off.
- 13.7.6 Subsequently discovered evidence or the results of subsequent inspections or test, nullify any previous payments for reasons stated in subparagraphs 13.7.1 through 13.7.5.
- 13.7.7 The CONTRACTOR has failed to fulfill or is in violation of any of his obligations under any provision of this Contract.

### **13.8 Retainage:**

At any time the DEPARTMENT finds that satisfactory progress is not being made it may in addition to the amounts withheld under 13.7 retain a maximum amount equal to 10% of the total amount earned on all subsequent progress payments. This retainage may be released at such time as the Contracting Officer finds that satisfactory progress is being made.

### **13.9 Request for Release of Funds:**

If the CONTRACTOR believes the basis for withholding is invalid or no longer exists, immediate written notice of the facts and Contract provisions on which the CONTRACTOR relies, shall be given to the DEPARTMENT, together with a request for release of funds and adequate documentary evidence proving that the problem has been cured. In the case of withholding which has occurred at the request of the Department of Labor, the CONTRACTOR shall provide a letter from the Department of Labor stating that withholding is no longer requested. Following such a submittal by the CONTRACTOR, the DEPARTMENT shall have a reasonable time to investigate and verify the facts and seek additional assurances before determining whether release of withheld payments is justified.

### **13.10 Substantial Completion:**

When the CONTRACTOR considers the Work ready for its intended use the CONTRACTOR shall notify the Contracting Officer in writing that the Work or a portion of Work which has been specifically identified in the Contract Documents is substantially complete (except for items specifically listed by the CONTRACTOR as incomplete) and request that the DEPARTMENT issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Contracting Officer, the CONTRACTOR and appropriate Consultant(s) shall make an inspection of the Work to determine the status of completion. If the Contracting Officer does not consider the Work substantially complete, the Contracting Officer will notify the CONTRACTOR in writing giving the reasons therefor. If the Contracting Officer considers the Work substantially complete, the Contracting Officer will within fourteen days execute and deliver to the CONTRACTOR a certificate of Substantial Completion with tentative list of items to be completed or corrected. At the time of delivery of the certificate of Substantial Completion the Contracting Officer will deliver to the CONTRACTOR a written division of responsibilities pending Final Completion with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties which shall be consistent with the terms of the Contract Documents.

The DEPARTMENT shall be responsible for all DEPARTMENT costs resulting from the initial inspection and the first re-inspection, the CONTRACTOR shall pay all costs incurred by the DEPARTMENT resulting from re-



inspections, thereafter.

### **13.11 Access Following Substantial Completion:**

The DEPARTMENT shall have the right to exclude the CONTRACTOR from the Work after the date of Substantial Completion, but the DEPARTMENT shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

### **13.12 Final Inspection:**

Upon written notice from the CONTRACTOR that the entire Work or an agreed portion thereof is complete, the Contracting Officer will make a final inspection with the CONTRACTOR and appropriate Consultant(s) and will notify the CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or Defective. The CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies. The CONTRACTOR shall pay for all costs incurred by the DEPARTMENT resulting from re-inspections.

### **13.13 Final Completion and Application for Payment:**

After the CONTRACTOR has completed all such corrections to the satisfaction of the Contracting Officer and delivered all schedules, guarantees, bonds, certificates of payment to all laborers, Subcontractors and Suppliers, and other documents - all as required by the Contract Documents; and after the Contracting Officer has indicated in writing that the Work has met the requirements for Final Completion, and subject to the provisions of paragraph 13.18, the CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all remaining certificates, warranties, guarantees, releases, affidavits, and other documentation required by the Contract Documents.

### **13.14 Final Payment:**

- 13.14.1 If on the basis of the Contracting Officer's observation of the Work during construction and final inspection, and the Contracting Officer's review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents; and the Contracting Officer is satisfied that the Work has been completed and the CONTRACTOR's other obligations under the Contract Documents have been fulfilled, the DEPARTMENT will process final Application for Payment. Otherwise, the Contracting Officer will return the Application for Payment to the CONTRACTOR, indicating in writing the reasons for refusing to process final payment, in which case the CONTRACTOR shall make the necessary corrections and resubmit the final Application for Payment.
- 13.14.2 If, through no fault of the CONTRACTOR, Final Completion of the Work is significantly delayed, the Contracting Officer shall, upon receipt of the CONTRACTOR's final Application for Payment, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the DEPARTMENT for Work not fully completed or corrected is less than the retainage provided for in paragraph 13.9, and if bonds have been furnished as required in paragraph 5.1, the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CONTRACTOR to the DEPARTMENT with the application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

### **13.15 Final Acceptance:**

Following certification of payment of payroll and revenue taxes, and final payment to the CONTRACTOR, the DEPARTMENT will issue a letter of Final Acceptance, releasing the CONTRACTOR from further obligations under the Contract, except as provided in paragraph 13.17.

**13.16 CONTRACTOR's Continuing Obligation:**

The CONTRACTOR's obligation to perform and complete the Work and pay all laborers, Subcontractors, and materialmen in accordance with the Contract Documents shall be absolute. Neither any progress or final payment by the DEPARTMENT, nor the issuance of a certificate of Substantial Completion, nor any use or occupancy of the Work or any part thereof by the DEPARTMENT or Using Agency, nor any act of acceptance by the DEPARTMENT nor any failure to do so, nor any review and Approval of a Shop Drawing or sample submission, nor any correction of Defective Work by the DEPARTMENT will constitute an acceptance of Work not in accordance with the Contract Documents or a release of the CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

When it is anticipated that restarting, testing, adjusting, or balancing of systems will be required following Final Acceptance and said requirements are noted in Section(s) 01650, such Work shall constitute a continuing obligation under the Contract.

**13.17 Waiver of Claims by CONTRACTOR:**

The making and acceptance of final payment will constitute a waiver of all claims by the CONTRACTOR against the DEPARTMENT other than those previously made in writing and still unsettled.

**13.18 No Waiver of Legal Rights:**

The DEPARTMENT shall not be precluded or be estopped by any payment, measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefor, from showing the true amount and character of the Work performed and materials furnished by the CONTRACTOR, nor from showing that any payment, measurement, estimate or certificate is untrue or is incorrectly made, or that the Work or materials are Defective. The DEPARTMENT shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the CONTRACTOR or his Sureties, or both, such damages as it may sustain by reason of his failure to comply with requirements of the Contract Documents. Neither the acceptance by the DEPARTMENT, or any representative of the DEPARTMENT, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of the Contract Time, nor any possession taken by the DEPARTMENT, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver by the DEPARTMENT of any breach of the Contract shall not be held to be a waiver of any other subsequent breach.

## **ARTICLE 14 - SUSPENSION OF WORK, DEFAULT AND TERMINATION**

### **14.1 DEPARTMENT May Suspend Work:**

- 14.1.1 The DEPARTMENT may, at any time, suspend the Work or any portion thereof by notice in writing to the CONTRACTOR. If the Work is suspended without cause the CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if the CONTRACTOR makes an Approved claim therefor as provided in Article 15. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that suspension is due to the fault or negligence of the CONTRACTOR, or that suspension is necessary for Contract compliance, or that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the CONTRACTOR.
- 14.1.2 In case of suspension of Work, the CONTRACTOR shall be responsible for preventing damage to or loss of any of the Work already performed and of all materials whether stored on or off the site or Approved remote storage sites.

### **14.2 Default of Contract:**

- 14.2.1 The Contracting Officer may give the CONTRACTOR and its surety a written Notice to Cure Default if the CONTRACTOR:
- a. fails to begin work in the time specified,
  - b. fails to use sufficient resources to assure prompt completion of the work,
  - c. performs the work unsuitably or neglects or refuses to remove and replace rejected materials or work,
  - d. stops work,
  - e. fails to resume stopped work after receiving notice to do so,
  - f. becomes insolvent (except that if the CONTRACTOR declares bankruptcy, termination will be under Title 11 US Code 362 and/or 365. The CONTRACTOR'S bankruptcy does not relieve the surety of any obligations to assume the Contract and complete the work in a timely manner.
  - g. Allows any final judgment to stand against him unsatisfied for period of 60 days, or
  - h. Makes an assignment for the benefit of creditors without the consent of the Contracting Officer, or
  - i. Disregards Regulatory Requirements of any public body having jurisdiction, or
  - j. Otherwise violates in any substantial way any provisions of the Contract Documents, or
  - k. fails to comply with Contract minimum wage payments or civil rights requirements, or
  - l. is a party to fraud, deception, misrepresentation , or
  - m. for any cause whatsoever, fails to carry on the Work in an acceptable manner.
- 14.2.2 The Notice to Cure Default will detail the conditions determined to be in default, the time within which to cure the default and may, in the Contracting Officer's discretion, specify the actions necessary to cure the default. Failure to cure the delay, neglect or default within the time specified in the Contracting Officer's written notice to cure authorizes the DEPARTMENT to terminate the contract. The Contracting Officer may allow more time to cure than originally stated in the Notice to Cure Default if he deems it to be in the best interests of the DEPARTMENT. The DEPARTMENT will provide the CONTRACTOR or its surety with a written Notice of Default Termination that details the default and the failure to cure it.
- 14.2.3 If the CONTRACTOR or its Surety, within the time specified in the above notice of default, shall not proceed in accordance therewith, then the DEPARTMENT may, upon written notification from the Contracting Officer of the fact of such delay, neglect or default and the CONTRACTOR's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the Work out of the hands of the CONTRACTOR. The DEPARTMENT may terminate the services of the CONTRACTOR, exclude the CONTRACTOR from the site and take possession of the Work and of all the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be

used by the CONTRACTOR (without liability to the CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the DEPARTMENT has paid the CONTRACTOR but which are stored elsewhere, and finish the Work as the DEPARTMENT may deem expedient. The DEPARTMENT may enter into an agreement for the completion of said Contract according to the terms and provisions thereof, or use such other methods that in the opinion of the Contracting Officer are required for the completion of said Contract in an acceptable manner.

- 14.2.4 The Contracting Officer may, by written notice to the CONTRACTOR and its Surety or its representative, transfer the employment of the Work from the CONTRACTOR to the Surety, or if the CONTRACTOR abandons the Work undertaken under the Contract, the Contracting Officer may, at its option with written notice to the Surety and without any written notice to the CONTRACTOR, transfer the employment for said Work directly to the Surety. The Surety shall submit its plan for completion of the Work, including any contracts or agreements with third parties for such completion, to the DEPARTMENT for approval prior to beginning completion of the Work. Approval of such contracts shall be in accordance with all applicable requirements and procedures for approval of subcontracts as stated in the Contract Documents.
- 14.2.5 After the notice of termination is issued, the DEPARTMENT may take over the work and complete it by contract or otherwise and may take possession of and use materials, appliances, equipment or plant on the work site necessary for completing the work.
- 14.2.6 Rather than taking over the work itself, the DEPARTMENT may transfer the obligation to perform the work from the CONTRACTOR to its surety. The surety must submit its plan for completion of the work, including any contracts or agreements with third parties for completion, to the DEPARTMENT for approval prior to beginning work. The surety must follow the Contract requirements for approval of subcontracts, except that the limitation on percent of work subcontracted will not apply.
- 14.2.7 On receipt of the transfer notice, the surety must take possession of all materials, tools, and appliances at the work site, employ an appropriate work force, and complete the Contract work, as specified. The Contract specifications and requirements shall remain in effect. However the DEPARTMENT will make subsequent Contract payments directly to the Surety for work performed under the terms of the Contract. The CONTRACTOR shall forfeit any right to claim for the same work or any part thereof. The CONTRACTOR shall not be entitled to receive any further balance of the amount to be paid under the Contract.
- 14.2.8 Upon receipt of the notice terminating the services of the CONTRACTOR, the Surety shall enter upon the premises and take possession of all materials, tools, and appliances thereon for the purpose of completing the Work included under the Contract and employ by contract or otherwise any person or persons to finish the Work and provide the materials therefore, without termination of the continuing full force and effect of this Contract. In case of such transfer of employment to the Surety, the Surety shall be paid in its own name on estimates covering Work subsequently performed under the terms of the Contract and according to the terms thereof without any right of the CONTRACTOR to make any claim for the same or any part thereof.
- 14.2.9 If the Contract is terminated for default, the CONTRACTOR and the Surety shall be jointly and severally liable for damages for delay as provided by paragraph 11.8, and for the excess cost of completion, and all costs and expenses incurred by the DEPARTMENT in completing the Work or arranging for completion of the Work, including but not limited to costs of assessing the Work to be done, costs associated with advertising, soliciting or negotiating for bids or proposals for completion, and other procurement costs. Following termination the CONTRACTOR shall not be entitled to receive any further balance of the amount to be paid under the Contract until the Work is fully finished and accepted, at which time if the unpaid balance exceeds the amount due the DEPARTMENT and any amounts due to persons for whose benefit the DEPARTMENT has withheld funds, such excess shall be paid by the DEPARTMENT to the CONTRACTOR. If the damages, costs, and expenses due the DEPARTMENT exceed the unpaid balance, the CONTRACTOR and its Surety shall pay the difference.
- 14.2.10 If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, or that termination was wrongful, the rights and obligations of the parties shall be determined in accordance with the clause providing for convenience termination.

### **14.3 Rights or Remedies:**

Where the CONTRACTOR's services have been so terminated by the DEPARTMENT, the termination will not affect any rights or remedies of the DEPARTMENT against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due the CONTRACTOR by the DEPARTMENT will not release the CONTRACTOR from liability.

### **14.4 Convenience Termination:**

14.4.1 The performance of the Work may be terminated by the DEPARTMENT in accordance with this section in whole or in part, whenever, for any reason the Contracting Officer shall determine that such termination is in the best interest of the DEPARTMENT. Any such termination shall be effected by delivery to the CONTRACTOR of a Notice of Termination, specifying termination is for the convenience of the DEPARTMENT the extent to which performance of Work is terminated, and the date upon which such termination becomes effective.

14.4.2 Immediately upon receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the CONTRACTOR shall:

- a. Stop Work on the date and to the extent specified in the Notice of Termination;
- b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work as is not terminated;
- c. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- d. With the written Approval of the Contracting Officer, to the extent he may require, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole, or in part, in accordance with the provisions of the Contract;
- e. Submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory exclusive of items the disposition of which had been directed or authorized by the Contracting Officer;
- f. Transfer to the Contracting Officer the completed or partially completed record drawings, Shop Drawings, information, and other property which, if the Contract had been completed, would be required to be furnished to the DEPARTMENT;
- g. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the CONTRACTOR and in which the DEPARTMENT has or may acquire any interest.

The CONTRACTOR shall proceed immediately with the performance of the above obligations.

14.4.3 When the DEPARTMENT orders termination of the Work effective on a certain date, all Work in place as of that date will be paid for in accordance with Article 13 of the Contract. Materials required for completion and on hand but not incorporated in the Work will be paid for at invoice cost plus 15% with materials becoming the property of the DEPARTMENT - or the CONTRACTOR may retain title to the materials and be paid an agreed upon lump sum. Materials on order shall be cancelled, and the DEPARTMENT shall pay reasonable factory cancellation charges with the option of taking delivery of the materials in lieu of payment of cancellation charges. The CONTRACTOR shall be paid 10% of the cost, freight not included, of materials cancelled, and direct expenses only for CONTRACTOR chartered freight transport which cannot be cancelled without charges, to the extent that the CONTRACTOR can establish them. The extra costs due to cancellation of bonds and insurance and that part of job start-up and phase-out costs not amortized by the amount of Work accomplished shall be paid by the DEPARTMENT. Charges for loss of profit or consequential damages shall not be recoverable except as provided above.

- a. The following costs are not payable under a termination settlement agreement or Contracting Officer's determination of the termination claim:
  1. Loss of anticipated profits or consequential or compensatory damages

2. Unabsorbed home office overhead (also termed "General & Administrative Expense") related to ongoing business operations
  3. Bidding and project investigative costs
  4. Direct costs of repairing equipment to render it operable for use on the terminated work
- 14.4.4 The termination claim shall be submitted promptly, but in no event later than 90 days from the effective date of termination, unless extensions in writing are granted by the Contracting Officer upon written request of the CONTRACTOR made within the 90-day period. Upon failure of the CONTRACTOR to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall thereupon pay to the CONTRACTOR the amount so determined.
- 14.4.5 The CONTRACTOR and the Contracting Officer may agree upon whole or any part of the amount or amounts to be paid to the CONTRACTOR by reason of the total or partial termination of Work pursuant to this section. The Contract shall be amended accordingly, and the CONTRACTOR shall be paid the agreed amount.
- 14.4.6 In the event of the failure of the CONTRACTOR and the Contracting Officer to agree in whole or in part, as provided heretofore, as to the amounts with respect to costs to be paid to the CONTRACTOR in connection with the termination of the Work the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the CONTRACTOR by reason of the termination and shall pay to the CONTRACTOR the amount determined as follows:
- a. All costs and expenses reimbursable in accordance with the Contract not previously paid to the CONTRACTOR for the performance of the Work prior to the effective date of the Notice of Termination;
  - b. So far as not included under "a" above, the cost of settling and paying claims arising out of the termination of the Work under subcontracts or orders which are properly chargeable to the terminated portions of the Contract;
  - c. So far as practicable, claims by the CONTRACTOR for idled or stand-by equipment shall be made as follows: Equipment claims will be reimbursed as follows:
    1. Contractor-owned equipment usage, based on the CONTRACTOR'S ownership and operating costs for each piece of equipment as determined from the CONTRACTOR'S accounting records. Under no circumstance, may the CONTRACTOR base equipment claims on published rental rates.
    2. Idle or stand-by time for Contractor-owned equipment, based on the CONTRACTOR'S internal ownership and depreciation costs. Idle or stand-by equipment time is limited to the actual period of time equipment is idle or on stand-by as a direct result of the termination, not to exceed 30 days. Operating expenses will not be included for payment of idle or stand-by equipment time.
    3. Rented equipment, based on reasonable, actual rental costs. Equipment leased under "capital leases" as defined in Financial Accounting Standard No. 13 will be considered Contractor-owned equipment. Equipment leased from an affiliate, division, subsidiary or other organization under common control with the CONTRACTOR will be considered Contractor-owned equipment, unless the lessor has an established record of leasing to unaffiliated lessees at competitive rates consistent with the rates the CONTRACTOR has agreed to pay and no more than forty percent of the lessor's leasing business, measured in dollars, is with organizations affiliated with the lessor.
- 14.4.7 The CONTRACTOR shall have the right of appeal under the DEPARTMENT's claim procedures, as defined in Article 15, for any determination made by the Contracting Officer, except if the CONTRACTOR has failed to submit his claim within the time provided and has failed to request extension of such time, CONTRACTOR shall have no such right of appeal. In arriving at the amount due the CONTRACTOR under this section, there shall be deducted:
- a. All previous payments made to the CONTRACTOR for the performance of Work under the Contract prior to termination;
  - b. Any claim for which the DEPARTMENT may have against the CONTRACTOR;
  - c. The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the

CONTRACTOR or sold pursuant to the provisions of this section and not otherwise recovered by or credited to the DEPARTMENT; and,

- d. All progress payments made to the CONTRACTOR under the provisions of this section.
- 14.4.8 Where the Work has been terminated by the DEPARTMENT said termination shall not affect or terminate any of the rights of the DEPARTMENT against the CONTRACTOR or his Surety then existing or which may thereafter accrue because of such default. Any retention or payment of monies by the DEPARTMENT due to the CONTRACTOR under the terms of the Contract shall not release the CONTRACTOR or its Surety from liability.
- 14.4.9 The CONTRACTOR's termination claim may not include claims that pre dated the notice for termination for convenience. Those claims shall be prosecuted by the CONTRACTOR under Article 15.
- 14.4.10 The CONTRACTOR'S termination claim may not exceed the total dollar value of the contract as awarded plus agreed upon change orders less the amounts that have been paid for work completed.
- a. Unless otherwise provided for in the Contract Documents, or by applicable statute, the CONTRACTOR, from the effective date of termination and for a period of three years after final settlement under this Contract, shall preserve and make available to the DEPARTMENT at all reasonable times at the office of the CONTRACTOR, all its books, records, documents, and other evidence bearing on the cost and expenses of the CONTRACTOR under his Contract and relating to the Work terminated hereunder.
  - b. Definitions. In this Subsection 108-1.09, the term "cost" and the term "expense" mean a monetary amount in U.S. Dollars actually incurred by the CONTRACTOR, actually reflected in its contemporaneously maintained accounting or other financial records and supported by original source documentation.
  - c. Cost Principles. The DEPARTMENT may use the federal cost principles at 48 CFR §§ 31.201-1 to 31.205-52 (or succeeding cost principles for fixed price contracts) as guidelines in determining allowable costs under this Subsection to the extent they are applicable to construction contracts and consistent with the specifications of this Contract. The provisions of this contract control where they are more restrictive than, or inconsistent with, these federal cost principles."

## **ARTICLE 15 - CLAIMS FOR ADJUSTMENT AND DISPUTES**

### **15.1 Notification**

- 15.1.1 The CONTRACTOR shall notify the DEPARTMENT in writing as soon as the CONTRACTOR becomes aware of any act or occurrence which may form the basis of a claim for additional compensation or an extension of Contract Time or of any dispute regarding a question of fact or interpretation of the Contract. The DEPARTMENT has no obligation to investigate any fact or occurrence that might form the basis of a claim or to provide any additional compensation or extension of Contract Time unless the CONTRACTOR has notified the DEPARTMENT in writing in a timely manner of all facts the CONTRACTOR believes form the basis for the claim.
- 15.1.2 If the CONTRACTOR believes that he is entitled to an extension of Contract Time, then the CONTRACTOR must state the contract section on which he basis his extension request, provide the DEPARTMENT with sufficient information to demonstrate that the CONTRACTOR has suffered excusable delay, and show the specific amount of time to which the CONTRACTOR is entitled. The DEPARTMENT will not grant an extension of Contract Time if the CONTRACTOR does not timely submit revised schedules under **Section 01310**.
- 15.1.3 If the matter is not resolved by agreement within 7 days, the CONTRACTOR shall submit an Intent to Claim, in writing, to the DEPARTMENT within the next 14 days.
- 15.1.4 If the CONTRACTOR believes additional compensation or time is warranted, then he must immediately begin keeping complete, accurate, and specific daily records concerning every detail of the potential claim including actual costs incurred. The CONTRACTOR shall provide the DEPARTMENT access to any such records and furnish the DEPARTMENT copies, if requested. Equipment costs must be based on the CONTRACTOR's internal rates for ownership, depreciation, and operating expenses and not on published rental rates. In computing damages, or costs claimed for a change order, or for any other claim against the DEPARTMENT for additional time, compensation or both, the CONTRACTOR must prove actual damages based on internal costs for equipment, labor or efficiencies. Total cost, modified total cost or jury verdict forms of presentation of damage claims are not permissible to show damages. Labor inefficiencies must be shown to actually have occurred and can be proven solely based on job records. Theoretical studies are not a permissible means of showing labor inefficiencies. Home office overhead will not be allowed as a component of any claim against the DEPARTMENT.
- 15.1.5 If the claim or dispute is not resolved by the DEPARTMENT, then the CONTRACTOR shall submit a written Claim to the Contracting Officer within 90 days after the CONTRACTOR becomes aware of the basis of the claim or should have known the basis of the claim, whichever is earlier. The Contracting Officer will issue written acknowledge of the receipt of the Claim.
- 15.1.6 The CONTRACTOR waives any right to claim if the DEPARTMENT was not notified properly or afforded the opportunity to inspect conditions or monitor actual costs or if the Claim is not filed on the date required.

### **15.2 Presenting the Claim**

- 15.2.1 The Claim must include all of the following:
- a. The act, event, or condition the claim is based on
  - b. The Contract provisions which apply to the claim and provide relief
  - c. The item or items of Contract work affected and how they are affected
  - d. The specific relief requested, including Contract Time if applicable, and the basis upon which it was calculated
  - e. A statement certifying that the claim is made in good faith, that the supporting cost and pricing data are accurate and complete to the best of your knowledge and belief, and that the amount requested accurately reflects the Contract adjustment which the CONTRACTOR believes is due.



### **15.3 Claim Validity, Additional Information, and DEPARTMENT's Action**

- 15.3.1 The Claim, in order to be valid, must not only show that the CONTRACTOR suffered damages or delay but that it was caused by the act, event, or condition complained of and that the Contract provides entitlement to relief for such act, event, or condition.
- 15.3.2 The DEPARTMENT can make written request to the CONTRACTOR at any time for additional information relative to the Claim. The CONTRACTOR shall provide the DEPARTMENT the additional information within 30 days of receipt of such a request. Failure to furnish the additional information may be regarded as a waiver of the Claim.

### **15.4 Contracting Officer's Decision**

The CONTRACTOR will be furnished the Contracting Officer's Decision within 90 days, unless the Contracting Officer requests additional information or gives the CONTRACTOR notice that the time for issuing a decision is being extended for a specified period under AS 36.30.620. The Contracting Officer's decision is final and conclusive unless, within 14 days of receipt of the decision, the CONTRACTOR delivers a Notice of Appeal to the Appeals Officer. Procedures for appeals are covered under AS 36.30.625 and AS 36.30.630.

### **15.5 Fraud and Misrepresentation in Making Claims**

Criminal and Civil penalties authorized under AS 36.30.687 (including, but not limited to, forfeiture of all claimed amounts) may be imposed on the CONTRACTOR if the CONTRACTOR makes or uses a misrepresentation in support of a claim or defraud or attempt to defraud the DEPARTMENT at any stage of prosecuting a claim under this Contract.

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