

# **GENERAL CONDITIONS**

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## GENERAL CONDITIONS

### Section 1: Definitions

(a) Act of god shall mean an earthquake, flood, cyclone or other cataclysmic phenomenon of nature. A rain, windstorm, high water or other natural phenomenon of unusual intensity for a specific locality, but which might reasonably have been anticipated from historical records of the general locality, shall not be construed as an Act of God.

(b) Addenda shall mean written modifications of the Contract Documents which may be issued by the Owner to holders of Contract Documents prior to opening Proposals.

(c) Bidder shall mean any person, partnership, firm or corporation that submits a Bid Proposal and Bid Bond, if required, to the Owner.

(d) Change Order shall mean a written supplemental agreement executed by the Owner and the Contractor to modify the Contract at the time of or after its execution.

(e) Construction shall mean:

(1) All management, superintendence, labor, materials, use of equipment and tools, transportation and other facilities or services necessary to complete the Contract.

(2) If the Contract includes the furnishing of manufactured equipment, "Construction" shall also include all management, superintendence, labor, materials, equipment components, tools, inspection, testing transportation and other facilities and services necessary to design, manufacture, fabricate, assemble, deliver and install equipment and complete the Contract.

(3) Without limiting the generality of the foregoing, "Construction" shall also include delivery to the location of the job site all management, superintendence, labor, materials, equipment, tools, transportation and other facilities and services necessary to complete the Contract.

(f) Contract shall mean the whole understanding between the Owner and the Contractor covering the furnishing of the construction and payment therefore and described or encompassed in the Contract Documents, including any addenda or change orders.

(g) Contract documents shall mean the documents enumerated in the agreement which form the Contract.

(h) Contract drawing shall mean a diagrammatic or pictorial description of the

construction to be furnished, or copies thereof, which is included as a part of the Contract Documents as modified by Addenda and Change Orders to the Contract. Contract Drawings shall include Proposal Drawings issued to Bidders to delineate the scope of the construction and Construction Drawings issued to the Contractor during construction to further describe the details of the Project design.

(i) Contractor shall mean the person, partnership or corporation whose Bid Proposal has been accepted by the Owner and who has furnished suitable Performance Bond and Payment Bond, Insurance Certificate or Insurance Policies, Lump Sum Bid Breakdown and executed the Agreement.

(j) Engineer shall mean an engineer, architect or other consultant contracted to the Owner and authorized to perform the engineering or architectural functions contemplated herein.

(k) Engineering specifications shall mean written descriptions, including performance, of the construction to be furnished which is part of the Contract Documents.

(l) Engineer's instruction shall mean a written interpretation of the Contract issued by the Engineer for the guidance of the Contractor.

(m) Or Equal shall mean construction items or materials substantially equal to that specified in the Contract Documents. The Engineer shall be the sole judge of the quality and suitability of proposed substitutions.

(n) Owner shall mean the KETCHIKAN GATEWAY BOROUGH, whose address is 1900 First Avenue, Ketchikan, Alaska 99901.

(o) Performance and payment bonds shall mean the form of Performance Bond and the form of Payment Bond included in the Contract Documents which shall be furnished by the Contractor and its Surety as assurance to the Owner that the Contractor will furnish, pay for, and warrant the construction and perform all the requirements of the Contract.

(p) Project shall mean the improvements and/or facility to be completed in whole or in part through the performance of the Contract.

(q) Project Manager shall mean the duly authorized employee of the Owner authorized to perform the contract administration functions contemplated herein.

(r) Bid proposal shall mean a Bidder's offer to the Owner to contract for and undertake furnishing the construction for one (1) or more Bid Schedules.

(s) Shop Drawing shall mean a diagrammatic, pictorial or written description of the details of proposed materials, equipment components, construction, adjustment

or operation, except drawings containing proprietary information, prepared by the Contractor or a Subcontractor and submitted for the review of the Engineer to demonstrate that the construction when completed will meet the requirements of the Contract.

(t) Subcontractor shall mean an independent person, partnership or corporation, other than an employee of the Contractor, supplying to and under agreement with the Contractor or any Subcontractor of the Contractor, any construction or equipment in connection with the Contract.

(u) Substantial completion shall mean that degree of completion of the construction necessary for the Project to function and operate at its intended location and for its intended use.

(v) Surety shall mean a corporation executing a Bid Bond, Performance Bond, Payment Bond or other bond payable to the Owner.

(w) Units of construction.

(1) "Basic Unit of Construction" shall mean an elementary part of the total construction which includes like materials and labor, is repetitive in nature, and is readily and economically measurable, i.e., "cu. yd. of concrete in place," "lin. ft. of pipe installed," or "lb. of reinforcing steel furnished."

(2) "Integrated Unit of Construction" shall mean a part of the total construction which combines various quantities of unlike materials, equipment and labor into a separate piece of construction where the component materials, equipment and labor are not in themselves readily and economically measurable, i.e., "road bridge complete" includes excavation, concrete, bridge work, backfill, etc.

(x) Unit price shall mean the amount bid by the Contractor for furnishing one (1) unit of construction, the quantities being subject to adjustment within the limits specified in the Contract Documents.

(y) Written notice shall mean a handwritten or typewritten communication delivered in person, or sent to the individual, or to a partner of the partnership, or to an officer of the corporation, which is the Contractor, at the address set forth in the Contractor's Bid Proposal or, if to the Owner, addressed to the Borough Manager, 1900 First Avenue, Suite 210, Ketchikan, Alaska 99901, or such other address as may be specified for such purpose in writing by the Contractor or Owner.

Section 2: Referenced Specifications and Abbreviations.

(a) Any material specified by reference to number, symbol or title of a specific standard such as a code, commercial standard, Federal Specification, trade association standard, or other similar standard, shall comply with the requirements of the issue in effect on the date of the Notice to Contractors Inviting Bids unless a specific issue is indicated in the special conditions or Engineering Specifications.

(b) Those applicable provisions of and such specifications which are referred to as provided in (a) above, except as modified in the Engineering Specifications, shall have full force and effect as though included in the Engineering Specifications.

(c) The following is a general list of abbreviations which may appear on the Contract Drawings or in the Engineering Specifications.

AAMA	Architectural Aluminum Manufacturers' Association
AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AEIC	Associated Edison Illuminating Companies
AGC	Associated General Contractors of America
AFBMA	Anti-Friction Bearing Manufacturers' Association
AGA	American Gas Association
AGMA	American Gear Manufacturers' Association
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Construction
AMCA	Air Moving and Conditioning Association
ANSI	American National Standards Institute
APA	American Plywood Association
API	American Petroleum Institute
APWA	American Public Works Association
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASE Code	American Standard Safety Code for Elevators, Dumwaiters and Escalators
ASHRAE	American Society of Heating, Refrigerating and Air Conditioning Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers' Association
AWS	American Welding Society

AWWA	American Water Works Association
CSI	Construction Specification Institute
DCDMA	Diamond Core Drill Manufacturers' Association
DEMA	Diesel Engine Manufacturers' Association
EEI	Edison Electric Institute
EIA	Electronic Industries Association
EJMA	Expansion Joint Manufacturers' Association
FHWA	Federal Highway Administration
Fed.	
Spec.	Federal Specifications
FSS	Federal Specifications and Standards General Services Administration
F.S. Std.	
Specs.	Forest Service Standard Specifications for Construction of Roads and Bridges, E,-7720-100, 1979, Forest Service U.S. Department of Agriculture, Washington, D.C. 20013
ICC	Interstate Commerce Commission
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
ICEA	Insulated Cable Engineers' Association
JIC	Joint Industrial Council
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NESC	National Electrical Safety Code
NFPA	National Fire Protection Association
PCI	Prestressed Concrete Institute
SAE	Society of Automotive Engineers
SMACNA	Sheet Metal and Air Conditioning Contractors' National Association, Inc.
SPR	Simplified Practice Recommendation
SSPC	Steel Structures Painting Council
TCA	Tile Council of America
TEMA	Tubular Exchanger Manufacturers' Association
UBC	Uniform Building Code
UL	Underwriters' Laboratories, Inc.

USASI United States of America Standards Institute  
WCLA West Coast Lumbermen's Association  
WWPA Western Wood Products Association

### Section 3: Subcontracts.

(a) The Contractor shall perform with its own organization not less than one-third (1/3) of the total monetary amount of the Contract and shall not sublet to any one (1) Subcontractor more than one-half (1/2) of the total monetary amount of the Contract without the previous written consent of the Owner. After execution of the Contract and prior to the beginning of operations on a subcontract, the Contractor may, if approved by the Owner through execution of a Change Order, employ a different Subcontractor than was offered in the Contractor's Bid Proposal. In this event the Total Contract Amount shall be reduced by an amount equal to the reduction, if any, in the cost to the Contractor as a result of the change of Subcontractor. The Contractor shall furnish to the Owner the detailed bids of both Subcontractors before execution of the Change Order.

(b) The Contractor shall be fully responsible to the Owner for the acts, errors and omissions of Subcontractors and of persons either directly or indirectly employed by them. The Contractor shall include all applicable provisions of these Contract Documents in all subcontracts for construction to be performed under this Contract.

(c) Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Owner. The Owner's consent to or approval of any Subcontractor under the Contract shall not relieve the Contractor of its obligations under the Contract and no such consent or approval shall be deemed to waive or modify any provisions of the Contract.

### Section 4: Performance and Payment Bonds.

(a) Within ten (10) days after the Contractor receives the Notice of Award, and prior to the execution of the Contract by the Owner, the Contractor shall furnish a Performance Bond and also a Labor and Materials Payment Bond, on the forms included in the Contract Documents, with a corporate Surety satisfactory to the Owner, which bonds shall insure the full and faithful performance of the Contract, including payment of all obligations arising thereunder, and each bond shall be in an amount equal to one hundred percent (100%) of the total contract amount unless otherwise provided in the Special Conditions.

(b) The Surety on such Performance Bond and Labor and Material Payment Bond shall be a duly licensed surety corporation authorized to do business in the State of Alaska and shall be named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be

accompanied by a certified copy of the authority to act.

(c) Failure to timely provide the bonds on the required bond forms and as required herein shall be grounds for the Owner rescinding the award and awarding to another bidder or rejecting all bids. The Contractor in such event forfeits the Contractor's bid security.

Section 5: Emergency construction. If, in the opinion of the Owner, and the Contractor is so advised, certain emergency construction must be done immediately to safeguard life or property or to protect completed construction, or the building or site where work is to be performed, the Contractor shall proceed at once with such emergency construction. The omission or failure of the Owner to form such an opinion or to advise the Contractor shall not excuse the Contractor from any obligation to safeguard life or property or to protect completed construction, or the buildings or site where work is to be performed. If such emergency construction is within the scope of the Contract, or is to protect completed construction, and is not caused by the negligence or acts or omissions of the Contractor, its employees, agents, representatives or subcontractors, the Contractor shall be paid as provided in the Contract. If such emergency construction is outside the scope of the Contract, the Contractor shall submit a written proposal within ten (10) days after commencement of the emergency construction and the construction shall be paid for as a change in construction; provided, however, the Owner shall have no obligation to compensate the Contractor for emergency construction required because of the Contractor's negligence or acts or omissions of the Contractor, its employees, agents, representatives, subcontractors, or other persons for whose acts the Contractor is liable or responsible. Failure to submit such a proposal within the specified time shall constitute waiver of any claim based upon such emergency construction.

Section 6: Contractor's default.

(a) If the Contractor becomes insolvent, is adjudged bankrupt or makes an assignment for the benefit of its creditors, or if a receiver, assignee or other liquidating officer is appointed for the Contractor, or if the Contractor fails to prosecute the work according to the Construction Schedule, or otherwise, or persistently or repeatedly refuses or fails to supply satisfactory superintendence, satisfactory numbers of properly skilled workmen or satisfactory construction or fails to make payment to employees or Subcontractors or payment for materials or equipment when due, or violates any law, ordinance, rule or regulation of any governmental authority having jurisdiction, or otherwise is in violation of any provisions of the Contract, the Contractor shall be in default under the Contract, and if such default continues for a period of ten (10) days after written notice thereof is served by the Owner upon the Contractor, the Owner, without prejudice to any other right or remedy, including termination, may declare the Contractor to be in default under the Contract by written notice thereof served upon the Contractor and its Surety.

(b) In the event of such declaration of default, the Surety shall have the

obligation immediately to remedy the default or to undertake performance of the Contractor's obligations under the Contract; provided, however, that if the Surety does not remedy the default or does not undertake such performance within fifteen (15) days from the date of service of such declaration of default, the Owner may, but shall not be required to take possession of the construction and of all the Contractor's equipment, tools and materials used in connection therewith and complete the construction by whatever method the Owner may deem expedient. In such event, the Contractor shall not be entitled to receive any further payment until the construction is completed. If the unpaid balance of the total contract amount exceeds the cost to the Owner of completing the Contract, including reasonable compensation for additional administrative, engineering and legal costs of the Owner, and any damages incurred by the Owner by reason of such default, such excess shall be paid to the Contractor. If the cost to the Owner of completing the Contract, including reasonable compensation for additional administrative, engineering and legal costs of the Owner, exceeds such unpaid balance, the Contractor shall immediately pay the excess to the Owner. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the Owner, including termination for default.

Section 7: Liquidated damages.

(a) For each and every calendar day that any portion of the work and construction is not completed after the Construction Time fixed for completion in the Contract Documents, the Contractor shall pay the Owner, not as a penalty but as liquidated damages, such amount per calendar day as is specified in the Special Conditions.

(b) Because the difficulty in computing the actual damages which will result from failure to complete the construction on time, the said amount of liquidated damages is hereby estimated, agreed upon and determined in advance by the parties hereto as a reasonable evaluation of the actual damages which the Owner will suffer for each and every day during which the completion of the construction is delayed beyond the Construction Time herein fixed.

(c) Such monies due the Contractor, or to become due the Contractor at or after the Construction Time fixed in the Contract Documents, for all or any part of the construction, as may be necessary to pay said liquidated damages, may be retained by the Owner, and if such amounts are not sufficient to pay such liquidated damages, the Contractor shall immediately pay the deficiency to the Owner. Such deductions or amounts retained by the Owner shall not in any degree release the Contractor from further obligation and liability with respect to fulfilling the entire Contract.

(d) Nothing herein shall be construed to preclude claims by the Owner for damages caused by Contractor errors, omissions, or negligence unrelated to time delay in completing the construction on time.

Section 8: Contractor's claims prior to substantial completion.

(a) Written notice of any condition or event for which a claim is subsequently to be made by the Contractor shall be made to the Owner in writing within two (2) days after the first observance of such condition or event. A written claim for damages or additional compensation setting forth in full detail the labor, material and other costs and the total amount of the claim and the reasons therefore, shall be given to the Owner by the Contractor, with a copy to the Engineer, within fifteen (15) days after the first notice of such condition or event and if such condition or event continues, a similar written claim shall be presented every thirty (30) days thereafter. The Contractor expressly agrees that failure to give such notice of such condition or event and to present such detailed claims within the times specified shall constitute a binding waiver of any claim based upon such condition or event. Knowledge of the condition or event on the part of the Owner shall not affect the requirements for such written notice and written claims within the specified times.

(b) The Contractor shall not cause a delay of construction during any dispute. If the Owner orders a modification of the Contract by issuing a Change Order which becomes a subject of dispute or if any interpretation of the Contract Documents, or Engineer's Instructions, becomes a subject of dispute, the Contractor, upon written notice from the Owner, shall proceed with the construction as modified by the disputed Change Order during the period required to resolve the dispute.

(c) Claims for additional payment for delay in the construction caused by any act or omission of the Owner shall be limited to damages, if any, sustained during the time reasonably required for the Contractor to discharge its employees and to move equipment to another construction project location which, in the opinion of the Engineer, is suitable for operations by such equipment. In no event shall such time exceed two (2) weeks for each such occurrence.

Section 9: Contractor's claims after termination, substantial completion or declaration of contractor's default.

(a) When in the opinion of the Engineer the Contract is substantially completed, the Owner will send to the Contractor, by registered or certified United States mail, a written Opinion of Substantial Completion. Within thirty (30) days after delivery of such Opinion of Substantial Completion, and also in the event of a declared default of the Contractor or termination of the Contract before substantial completion, the Contractor shall give the Owner written notice of any claim it intends to make against the Owner arising out of or in relation to the Contract; provided, that written notice of a claim based upon an event which occurs after receipt by the Contractor of the Opinion of Substantial Completion may be so given within thirty (30) days after the occurrence of the event upon which the claim is based but in no event later than thirty (30) days after Owner has given Notice of Acceptance of the Construction. The notice of claim shall state the amount claimed and shall specify in detail the nature, grounds and manner of computation of the amount of the claim. The fact that the Contractor has given any notice or presented any claim required by any other provision of the Contract

shall not relieve it from giving the notice required by this section of the Contract nor shall giving the notice required by this section relieve the Contractor from the effect of failure to give any notice or present any claim as required by any other paragraph or section of the Contract.

(b) Within sixty (60) days after receipt of such notice of claim, the Owner will give the Contractor written notice that the claim is allowed or rejected or allowed in part and rejected in part. Any claim or part thereof so allowed shall constitute an acknowledged obligation of the Owner under the Contract payable in due course. Failure to give such written notice of allowance or rejection within sixty (60) days after the Owner receives the notice of claim shall constitute rejection thereof in full. The Contractor shall not start suit on any claim until the Owner has rejected the claim in whole or in part or has been accorded sixty (60) days in which to allow or reject the claim as above provided.

(c) The parties hereto expressly agree that the Contractor shall have thirty (30) days after receipt of written notice that the claim has been rejected in whole or in part, or ninety (90) days after the notice of claim is received by the Owner in case no notice of rejection is given, to bring suit against the Owner in the appropriate court sitting in the City of Ketchikan, First Judicial District, State of Alaska, and that otherwise, the claim, except the portion thereof allowed by the Owner, shall be forever barred. No suit shall be brought against the Owner on any claim arising out of or in connection with the Contract unless the requirements of this section applicable to the Contractor have been strictly complied with.

Section 10: Assignment of contract. The Contractor shall not assign, transfer, convey, pledge, hypothecate, or otherwise dispose of or encumber this Contract, or any rights thereunder, without the prior written consent of the Owner. Any such attempted assignment, transfer, conveyance, pledge, hypothecation, or other disposition shall be null and void and of no force or effect. No assignment of the Contract or funds due under the Contract by the Contractor with the consent of the Owner shall be valid unless it contains a provision that the funds to be paid to the assignee under the assignment are subject to all the Contractor's obligations under the Contract.

Section 11: Waiver or modification. The failure of either party to the Contract to insist upon strict performance of any of the terms or provisions of the Contract Documents shall not constitute a waiver or relinquishment of any such terms or provisions, but the same shall be and remain in full force and effect. The making of any payment by the Owner to the Contractor, with or without knowledge of any default or breach of the Contract, shall not be deemed to be a waiver as to any default or breach of any term or provision of the Contract Documents. No waiver or modification of any term or provision of the Contract Documents shall be claimed by the Contractor unless the same is made by Change Order, and no such waiver or modification shall constitute a waiver or modification of any other term or provision.

Section 12: Severability and headings.

(a) If any part of the Contract Documents, including, but not limited to, any

provision, paragraph, clause, phrase or words, is found to be in conflict with applicable law, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder shall be given full force and effect.

(b) The descriptive headings of the various parts, sections, paragraphs, and other portions of the Contract Documents have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions of the Contract Documents.

Section 13: Intent of contract documents.

(a) Except as otherwise provided in the Special Conditions, the intent of the Contract Documents is to include all plant, materials, equipment, tools, supplies, management, superintendence, Contractor's design and detailing, work, labor, transportation, fuel, power, water and all other utilities and services necessary for furnishing all of the construction required for the proper performance of the Contract.

(b) Except as may be otherwise provided in the Special Conditions, the intent of the Contract Documents is to specify and set forth a complete and operating unit or system ready for use regardless of whether or not every detail has been set forth in the Contract Documents. Any omission of details from the Contract Documents shall not be construed to mean that they are to be omitted by the Contractor or to affect in any way the completeness of the construction. The cost of such details shall be included in the prices in the Bid Proposal.

Section 14: Discrepancies in contract documents.

(a) If at any time the Contractor discovers that there is possible error, omission or discrepancy in any of the Contract Documents, the Contractor shall immediately notify the Engineer in writing. The Engineer shall promptly review the alleged error, omission or discrepancy and issue an Engineer's Instruction or the Owner may issue a Change Order. Any work done after such discovery and until receipt of an Engineer's Instruction or execution of a Change Order shall be at the Contractor's expense.

(b) To avoid any disputes which might arise as to the meaning of any engineering requirements in the Contract Documents or to any alleged error, omission or discrepancy therein, the Engineer's opinion as to the true intent and meaning, and the Engineer's interpretation thereof, shall be first obtained before any legal action is taken. All dimensions shall be taken from numerical figures on the Contract Drawings and no dimensions scaled from such drawings are valid. If dimensions are apparently missing from the Contract Drawings, work shall be suspended on that portion of the construction until the Owner has been notified and has made the necessary dimensions available via an Engineer's Instruction or on a Contract Drawing.

(c) Should any discrepancies or conflicting provisions among the various

Contract Documents be discovered, precedence is hereby established in the following order:

1. Change Orders
2. Agreement
3. Addenda
4. Special Conditions
5. General Conditions
6. Engineering Specifications
7. Contract Drawings
8. Construction Schedule
9. Notice to Contractors Inviting Bids
10. Information for Bidders
11. Performance and Payment Bonds
12. Bid Proposal as Accepted.

Section 15: Drawings, Specifications and Instructions.

(a) The Owner has prepared designs and Contract Documents and may from time to time issue additional information during the term of the Contract, by means of Engineer's Instructions, Construction Drawings or otherwise, to add detail to the Contract Documents. All such Instructions, Drawings and additional information shall be consistent with the Contract Documents and shall be developments thereof.

(b) All construction shall be furnished in accordance with the Contract Documents and to the dimensions fixed thereby. The Owner reserves the right to make reasonable revisions in dimensions and relocations of construction; provided, however, that such revisions or relocations are made prior to construction of any item to be revised or relocated. If such revisions and relocations result in no additional cost to the Contractor, such revisions or relocations shall be made at no additional cost to the Owner.

Section 16: Shop drawings.

(a) The Contractor shall prepare or secure, and submit to the Owner for review, not as a check of details but for the purpose of determining whether or not the general method of fabrication, quality of materials and equipment and detailing are in accordance with the Contract Documents, are suitable for instruction of operating personnel and for maintenance, such nonproprietary Shop Drawings as are necessary in the opinion of the Engineer for such purposes. Such Shop Drawings shall include, but not be limited to, general arrangement, outline, connection and external detail drawings and instruction, operation and maintenance booklets. Two reproducible prints and one contact print of each Shop Drawing shall be submitted to the Owner. Four (4) copies of all catalog cuts serving as Shop Drawings shall be submitted to the Owner over and above the number of copies the Contractor wants returned following Owner's review.

(b) The review of Shop Drawings shall not relieve the Contractor of the

responsibility which it has under the Contract Documents, including but not limited to quality, quantity, performance characteristics, dimensions, adequate details, schedules and satisfactory coordination of all materials and equipment components. The Contractor shall submit such Shop Drawings with such promptness as to cause no delay in its own operations or that of its Subcontractors. Shop Drawings shall be checked by the Contractor to determine that they do not deviate from the Contract Documents, and if they do, such Shop Drawings shall be accompanied by a written notice to the Engineer stating in detail the nature of and the reasons for any proposed deviations. Shop Drawings shall be submitted in such sequence as is necessary in the opinion of the Engineer to give them adequate review.

(c) The Engineer's review will be completed within a reasonable time after receipt by the Engineer of each Shop Drawing in proper sequence with markings as follows:

(1) Reviewed. Indicates Shop Drawing has been reviewed and appears to conform with the intent of the design concept. The Contractor shall make further distribution of the Shop Drawing and may proceed with fabrication shown on the Shop Drawing.

(2) Resubmit. Indicates Shop Drawing or part thereof does not appear to conform with the design concept. The Owner's comments will be noted on the Shop Drawing or in a separate letter. The Contractor shall recheck, make necessary revisions and resubmit for Owner's review.

(3) Reference. Indicates Shop Drawing gives information that is incidental to construction described in the Contract Documents and is for general information only.

(d) All Shop Drawings and data shall be concise and legible. Detailed information about the various components involved shall be clearly identified with the component designation. Shop Drawings shall include, as applicable, equipment outlines and dimensions, foundation requirements and wiring diagrams giving complete information for the installation and erection, maintenance and repair, or for identification of parts for ordering replacements on each item to be furnished under the Contract.

(e) The Contractor shall submit to the Owner three (3) sets of final Shop Drawings, showing all changes and revisions and shall furnish one (1) full-size black-on-white positive mylar transparency to the Owner.

Section 17: Contractor's copies of drawings. The Contractor will be supplied by the Owner without charge, not more than three (3) sets of Contract Drawings. Additional copies of Contract Drawings, if desired by the Contractor, will be furnished by the Owner at cost. The Contractor shall keep at least one (1) record copy of all Contract Documents, including Plans, Shop Drawings, Modifications, etc., at the construction site in good condition in a weather-tight enclosure to show all changes, revisions, and "as-built" notations made during the construction process. These are to be available to the Engineer and shall be delivered to him for the Owner upon completion of the project.

Section 18: Materials and Equipment.

(a) Unless otherwise provided in the Special Conditions, the Contractor shall furnish and fully pay for all construction prior to acceptance by the Owner. All materials and equipment incorporated in the completed construction shall be new and not previously used. If requested by the Owner, the Contractor shall provide satisfactory evidence of the kind and quality of materials and equipment to be furnished and that such have been paid for.

(b) If materials or equipment are specified in the Special Conditions to be furnished by the Owner, they shall be conclusively deemed acceptable for the purpose designed if received in satisfactory condition. The Contractor may continue to use such materials or equipment until otherwise directed; provided, however, that if the Contractor discovers any defect in materials or equipment furnished by the Owner, it shall immediately notify the Owner and the Engineer in writing and shall cease to use such defective items pending receipt of written instructions from the Owner or the Engineer.

(c) If materials or equipment are specified in the Special Conditions to be furnished by the Owner, they shall be received by the Contractor f.o.b. the point of delivery specified in the Special Conditions, and in the absence of such specification, receipt by the Contractor shall be f.o.b. the plant of the supplier of the materials or equipment to be so furnished. The Contractor shall receive, load and unload, transport, store and properly protect from damage or loss all such materials or equipment and the Contractor shall be responsible for loss or damage after receipt of materials or equipment and until final acceptance of the construction by the Owner. The Contractor shall immediately report to the Owner and the Engineer in writing in the form and manner prescribed by the Engineer the receipt of Owner-furnished materials and equipment.

Section 19: Workmanship. All construction shall be such that its several component parts function as a workable system, with all accessories necessary for its proper operation, and the construction shall be furnished with all components tested, properly adjusted, and in operation. The construction shall be furnished in conformance with the normally accepted standard practice of the trade so as to contribute to maximum efficiency of operation, accessibility and appearance and minimum cost of operation, maintenance and construction of future alterations and additions. It shall also be so furnished that the completed construction will conform and adjust to and operate in a coordinated manner with the existing installation, if any.

Section 20: Compliance with contract documents.

(a) Unless otherwise provided in the Special Conditions, whenever in the Contract Documents any material, equipment, method or process is indicated or specified without reservation, by patent or proprietary name, by name of the manufacturer or by catalog number, such specification shall be deemed to be used for

the purpose of establishing a standard of quality and for facilitating the description of the material, equipment, method or process desired, and shall be deemed to be followed by the words "or equal." In such event the Contractor may offer to furnish another material, equipment, method or process which shall be substantially equal in every respect to that so indicated or specified. The Engineer shall be the sole judge of the equality of such material, equipment, method or process offered in substitution.

(b) Offers of substitution for items described in the Contract Documents will be considered only upon the written request of the Contractor, and no requests for such substitutions will be acknowledged or considered from suppliers, distributors, manufacturers or subcontractors or any other source. Requests for approval of a substitution shall be by submitting Shop Drawings, where applicable, and shall be accompanied by documentary evidence of equality in the form of descriptive literature, samples, records of performance, certified copies of tests by independent recognized laboratories, and differences in prices and delivery, if any, in the form of certified quotations from suppliers of both the specified material, equipment, method or process and the proposed substitute.

(c) Such offers of substitution of materials or equipment shall include data to substantiate that the "or equal" product meets the following criteria applicable to the item submitted:

(1) The change is adaptable to the design, (2) the functional performance will be equal to or better than the item specified, (3) where the appearance affects the end product, the appearance of the item will be as good as or better than the item specified, (4) the maintenance cost for the product or item will be equal to or less than the item specified, (5) the quality of materials used and the level of construction of the item will be as good or better than the item specified, (6) the net price of the item will be within the same price range as the item specified and (7) installation cost of the item specified will be equal to or less than that of the item specified.

#### Section 21: Value Engineering.

(a) The Contractor may submit alternate construction details for consideration where these will result in reduced project cost without loss of essential function. Such alternates shall be in the form of written value engineering proposals indicating the nature of recommended revisions and the Contractor's proposed credit to the Owner.

(b) A value engineering proposal shall constitute a binding offer by and on the Contractor and may not be withdrawn. However, if not accepted within the time limits described in (c) below, the proposal shall become void. The terms and credits of the proposal may be changed by mutual agreement between the Owner and Contractor, or may be accepted without further modification by the Owner.

(c) The value engineering proposal shall be in sufficient detail to permit a

reasonably complete evaluation of the costs and technical changes involved. Proposals shall be addressed to the Owner's Engineer, who shall respond within fourteen (14) calendar days after receipt regarding functional acceptability or completeness of the proposal. In the event no response is made within this time period, the proposal shall be considered rejected. The judgment of the Owner's engineer shall be final regarding acceptability of Contractor's proposal.

(d) If a proposal is accepted, the Contract shall be amended by Change Order to reflect the modifications and the Contract amount shall be decreased by negotiated or offered credit amount.

Section 22: Soil And/or Subsurface Conditions. Any data regarding soil and/or subsurface conditions which may be shown in the Construction Drawings, Engineering Specifications, or elsewhere in the Contract Documents, is not to be taken as a representation, but is based on limited information and is at best only an opinion; consequently, such data cannot and shall not be considered precise or complete and there is no guarantee or representation as to its completeness, accuracy, or precision and the Owner shall not be liable therefore. All Bidders and/or Contractors shall thoroughly familiarize themselves with the site and subsurface conditions at all locations on this project by their own independent investigation, including soils or other tests, and the nature of such condition shall be determined and ascertained by Bidders and Contractors on their own by independent investigations and to their own satisfaction.

Section 23: Storage of Materials and Equipment. If any materials or equipment are stored, they shall be stored so as to ensure the preservation of their quality and fitness. Materials and equipment shall be placed on platforms or other hard, clean surfaces, and not on the ground, and shall be placed under cover and heated adequately to prevent condensation or freezing. Stored materials and equipment shall be located so as to facilitate observation. The Contractor shall be responsible for all damage to or loss of the materials or equipment that occurs until written acceptance by the Owner.

Section 24: Manufacturer's Instructions. All instructions and directions of the manufacturer of material and equipment furnished to the Contractor shall be followed unless specified to the contrary. The Contractor shall obtain and furnish to the Engineer prior to use of materials or installation of equipment five (5) copies of all instructions and directions of the manufacturer of such materials and equipment.

Section 25: Defective Materials and Workmanship.

(a) The Contractor shall promptly remove from the premises all materials and equipment and correct all construction which in the opinion of the Engineer is defective in workmanship or materials or fails to conform to the Contract, or the manufacturer's specifications or technical data, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute its own construction in accordance with the Contract and without cost or expense to the Owner, and shall bear the expense of making good all construction of other contractors or the Owner's building or site,

destroyed or damaged by such removal and replacement.

(b) If the Contractor does not remove construction which in the opinion of the Engineer is defective or fails to conform to the Contract, within a reasonable time, which shall be fixed by written notice from the Owner, the Owner may remove and store the materials and cause the correction of such construction at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten (10) days after delivery of a notice of the cost of such removal and storage, the Owner may give written notice to the Contractor and ten (10) days after such notice the Owner may dispose of the material. Costs arising from such removal, storage or disposal of materials and correction of the construction shall be paid by the Contractor and may be deducted from any payment due the Contractor. The provisions of this section shall not impose any duty or responsibility on the Owner or Engineer to advise or inform Contractor of any materials or work considered to be defective and failure to do so shall not be deemed to be an acceptance of defective materials or work by the Engineer or by the Owner.

(c) All work such as pipes, wires, conduits, insulation and any other items designated by the Engineer shall be inspected prior to the work being covered.

All work requiring inspection that is covered prior to inspection by the Engineer shall be uncovered for inspection as requested by the Engineer and recovered at no cost to the Owner.

#### Section 26: Warranties.

(a) The Contractor warrants to the Owner that the construction to be provided under the Contract shall be fit for the purpose specified when operated in accordance with generally accepted operating practices; shall be new and free from any defects in material, workmanship, and title; shall meet all specifications, including those relating to performance, contained or incorporated by reference in the Contract; and that the technical direction of installation will be performed in a competent, diligent manner in accordance with generally accepted professional standards.

(b) The foregoing warranties (except as to title) shall apply to defects or deficiencies occurring within a period of one (1) year from final acceptance of the Project by the Owner. If, however, during the above one (1) year warranty period the construction is not available for operation due to a failure to meet such warranties, such time of unavailability shall not be counted as part of the warranty period. The conditions of any field tests shall be mutually agreed upon, and the Contractor shall be notified of and may be represented at all tests that may be made.

(c) If the construction furnished does not meet the warranties specified above, assuming normal and proper use and maintenance, the Owner shall promptly notify the Contractor and make the construction available for correction. The Contractor shall thereupon correct all defects, including nonconformance with the Engineering Specifications, at its expense, either by repairing or replacing any defective or damaged parts of

the construction furnished under the Contract. All of the costs of labor, materials and equipment associated with such repair or replacement of the construction, including removal, loading and unloading, transportation to and from the repair site and reinstallation, shall be borne by the Contractor.

(d) Any repaired or replacement construction furnished under the aforesaid warranty shall also carry warranties for one (1) year on the same terms as set forth above from the date of its repair or replacement.

(e) The Contractor shall obtain written warranties from its Subcontractors and suppliers of material and equipment where such warranties are specifically required by the Special Conditions and shall deliver the original warranties to the Owner.

(f) Neither the final payment, nor any other provision of the Contract, nor partial or entire use of the construction by the Owner shall relieve the Contractor of liability with respect to the warranties referred to in the Contract or any other warranties express or implied.

(g) In the event the Contractor fails to accomplish the warranty work as required herein, the Owner may proceed to accomplish the same and the Contractor, and its Surety, shall be jointly and severally liable to the Owner for all costs and expenses in relation thereto.

#### Section 27: Patents and Royalties.

(a) The Contractor shall pay the costs of all royalties, permits, licenses or other fees necessary for the performance of the Contract.

(b) The Contractor warrants that the construction furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any patent. If notified promptly in writing and given authority and information, the Contractor shall appear and defend or may settle, at its expense, any suit or proceeding against the Owner so far as it is based on a claimed patent infringement which would result in a breach of this warranty and the Contractor shall pay all damages and costs awarded therein against the Owner due to such breach. In the event the construction or any part thereof is held to constitute such an infringement and the use of said construction or part is enjoined, the Contractor shall, at its expense and option, either procure for the Owner the right to continue using said construction or part, or replace same with non-infringing construction, or part, or modify same so it becomes non-infringing.

(c) The preceding subparagraph shall not apply to any construction or part manufactured to the Owner's design, or to the use of any construction furnished hereunder in conjunction with any other product in a combination not furnished by the Contractor pursuant to the Contract. As to any such construction, part, or use of such combination, the Contractor shall have no liability for patent infringement.

Section 28: Laws and Regulations.

(a) The Contractor shall give all notices required by law and comply with all laws, ordinances, rules and regulations relating to the conduct of the construction. The Contractor shall be liable for all violations of the law in connection with construction furnished by the Contractor.

(b) If the Contractor observes that the Contract Documents are at a variance with any law, ordinance, rule or regulation the Contractor shall promptly notify the Owner in writing and all necessary changes shall be made by Engineer's Instructions or Change Order. If the Contractor performs any work knowing or that the Contractor should have known to be contrary to such laws, ordinances, rules and regulations, and without giving such notice to the Owner, the Contractor shall bear all costs of required changes and be liable to the Owner for all damages arising therefrom.

Section 29: Permits.

(a) Permits, licenses and easements of a temporary nature which are necessary only for and during the construction, shall be secured and paid for by the Contractor, except those permits, licenses or easements of a temporary nature which are stated in the Special Conditions to be provided by the Owner.

(b) Permits, licenses, and easements of a permanent nature, which are necessary to be maintained after acceptance of construction, shall be secured and paid for by the Owner unless otherwise specified in the Special Conditions.

Section 30: Hold Harmless And Indemnity. The Contractor specifically obligates itself to the Owner in the following respects, to-wit:

(a) To indemnify and appear and defend and hold harmless the Owner, its elected and appointed officials and employees, from and against any and all claims, damages, losses, costs and expenses, including attorneys' fees and expenses incurred, whether or not suit is filed, and for injuries to or theft of property, including loss of use, injuries to persons, including death, and from any and all other claims, suits or liability, caused in whole or in part by any act or omission of the Contractor, or any of its officers, agents, employees, representatives, servants or subcontractors, or anyone employed by them, or for whose acts Contractor may be liable, in the performance or nonperformance of the work or construction, or of any of the terms and/or conditions of the Contract, or caused by or resulting from any act or omission of Contractor, or any of Contractor's employees, agents, representatives, licensees, contractors or representatives.

(b) To appear, defend, indemnify and hold harmless the Owner and its officers, agents, and employees from and against any and all claims, judgments, liens, loss, damage, cost, charge or expense, including defense costs, court costs and attorneys' fees, whether direct or indirect, by reason of casualties to the construction whether

completed or not, including loss of use thereof.

Section 31: Insurance.

(a) Contractor shall not commence work under this Contract until all of the insurance required under this section has been obtained and Contractor has filed the certificates of insurance and copies of insurance policies with the Owner as required by the Contract Documents, and the Owner has approved the same, nor shall Contractor allow any subcontractor to commence work on his subcontract until the insurance required has been so obtained.

(b) General Liability Insurance.

(1) Coverage. The Contractor shall purchase and maintain General Liability Insurance covering bodily injuries, including death at any time resulting therefrom, sustained by any person or persons, and covering damages to property, including loss of use thereof, arising out of or in consequence of the performance of the Contract or the work or construction, whether such injuries to persons or damages to property are due or are claimed to be due to operations of the Contractor, its subcontractors, or any of their officers, employees, servants, partners, agents or representatives. The Owner shall be named as an additional insured on all such policies.

(2) Insurance Amounts. Such General Liability Insurance shall be in the amounts set forth on the form of Certificate of Insurance included in the Contract Documents and required herein to be filed with the Owner.

(3) Insurance Period. Such General Liability Insurance shall be maintained in effect at all times until final acceptance by the Owner of all of the completed construction, and products liability and completed operations liability for at least two (2) years thereafter.

(4) Insurance Form. Such General Liability Insurance shall indemnify and defend the Contractor, its subcontractors and the Owner, as an additional named insured, and all of their officers, employees, servants, partners, agents and representatives from and against any and all claims, judgments, liens, loss, damage, cost, charge or expense, including defense costs, court costs and attorneys' fees, whether direct or indirect, by reason of liability imposed by law or by contract upon said parties, including Operations/Premises Liability, Independent Contractor's Protective Liability/Owner's Protective Liability, Completed Operations and Products Liability, Broad Form Blanket Contractual Liability, Owner, Non-owned, and Hired Vehicles and Equipment, and Broad Form Property Damage, including explosion, collapse and underground damage and loss of use. Such General Liability Insurance shall be provided on a comprehensive bodily injury and property damage liability form satisfactory to the Owner and shall name the Owner as an additional insured and shall cover and

include Contractor's contractual indemnity of Owner. The coverage shall not include an unfunded self-insured retention. A Certificate of Insurance certifying such insurance policies have been issued to the Contractor shall be filed with the Owner in the amount and form and as required herein.

(c) Worker's Compensation.

(1) Insurance Requirements. The Contractor and its subcontractors shall purchase and maintain industrial accident or worker's compensation insurance issued by an insurance company authorized to write such insurance in the State of Alaska covering bodily injuries, including death at any time resulting therefrom, suffered or alleged to have been suffered by any employee of the Contractor or its subcontractors by reason of or in the course of operations under the Contract.

(2) Insurance Amount. The amount and type of such industrial accident or worker's compensation insurance shall be that required by law for all employees employed under the Contract who may come within the protection of such laws, and as required by the Certificate of Insurance required under (e) below.

(3) Insurance Period. Such industrial accident and worker's compensation insurance shall be maintained in effect until final acceptance of the completed work and construction.

(4) Failure to Maintain Worker's Compensation Insurance. The Contractor acknowledges and agrees that in the event it fails to maintain proper worker's compensation insurance coverage, the State and the Owner may pursue any remedies provided by AS 23.30.045, terminate the Contract without liability, and/or take or pursue any other remedies otherwise provided by law.

(d) Builder's All Risk.

(1) Insurance Requirement. Contractor shall purchase and maintain All Risk Builder's Risk (course of construction) insurance covering any and all loss, casualty or otherwise, of all or any part of the work or construction, and all work and materials in place and materials stored at the building site and at remote storage sites, which insurance shall include, but not be limited to, loss by fire, earthquake, landslide or flood damage. The Contractor and the Owner shall each be named as insured as their interests may appear and each shall be named in the policy or policies as insureds and the deductible shall not exceed ten percent (10%) of the total amount of insurance that is required in (2) below without prior approval of the Owner. Contractor shall furnish coverage at all times for the full replacement value of all completed work and construction, including approved Change Orders, as well as materials in place and/or stored at the site, whether or not partial payment has been paid by the Owner. The

Contractor shall maintain this insurance until all of the work and construction under the Contract has been fully completed and finally accepted by the Owner. Contractor shall submit to the Owner a complete copy of the All Risk Builder's Risk (course of construction) insurance policy hereinabove required.

(2) Insurance Amount. Such All Risk Builder's Risk insurance shall be equal to the Total Contract Amount.

(3) Insurance Period. Such Builder's All Risk insurance shall be maintained in effect until final acceptance of all of the completed work, construction and the Project.

(e) Certificates of Insurance. Contractor shall deposit with the Owner not later than submittal of the signed Agreement and required bonds, Certificates of Insurance from its insurance companies certifying to the coverage of all of the insurance required in this section in the form, and in the amounts set forth on the form of Certificate of Insurance set forth in the Contract Documents, and as required herein, and shall furnish copies of all insurance policies at any time upon request of the Owner.

(f) Cancellation of Insurance.

(1) The Contractor shall not cause any insurance policy to be canceled or permit any policy to lapse or reduce the amount of such insurance during the period of the Contract. All insurance policies shall include a provision to the effect that the insurance policy shall not be subject to cancellation, lapse, or to a reduction in the amount of insurance until written notice has been first delivered to the Owner by the insuring company stating the date that such cancellation, lapse, or reduction shall be effective, which date shall not be less than thirty (30) days after the delivery of such notice to the Owner.

(2) When a renewal of the policy is approaching, Contractor shall deposit evidence of renewal not less than twenty (20) days before expiration of the term of the policy.

(3) The Owner shall have the right to require Contractor provide verification, including the right to inspect Contractor's records at reasonable times, to confirm the insurance called for herein is in force. If the Contractor fails to provide verification of full coverage of all the insurance required by the Contract Documents, at all times, Owner may, without liability, direct the Contractor cease any further operations, and remove all personnel and equipment from the project site until all such insurance is verified as being in full force and effect, or may, without liability, deem such failure to verify full coverage as a material breach and default and terminate the Contract without liability.

(g) Waiver of Subrogation. Each of the policies of insurance required herein shall contain a clause or endorsement pursuant to which the insurance companies

waive subrogation or consent to a waiver of right to recovery against the Owner.

(h) Insurance Companies. Unless such requirement is waived by the Owner in writing, all insurance companies issuing any insurance required in this section shall be member insurers included and covered under the Alaska Insurance Guarantee Association Act (Alaska Statutes, Section 21.80.010, et seq.).

Section 32: Wage Rates.

(a) Contractor shall pay not less than the minimum wage per hour for each classification of laborers, workers, or mechanics as set forth in the State of Alaska, Department of Labor, Wage and Hour Division, pamphlet entitled "Laborers' and Mechanics' Minimum Rates of Pay," in accordance with the memorandum from the Alaska Department of Labor dated **April 1, 2008** which states:

(b) All projects with a final bid date April 1, 2008, or later must pay the prevailing wage rates contained in this pamphlet. As the law now provides, these rates will be stable for a two-year period or the life of the project, whichever is shorter. If a higher federal rate is required due to partial federal funding or other federal participation, the higher rate must be paid.

(c) Upon expiration of the initial 24-month period, if new wage rates have been issued by the Department, the latest wage rates issued shall become effective for the subsequent 24-month period or until the original contract is completed, whichever occurs first. This process shall be repeated until the original contract is completed.

(d) The term "original contract" as used above means the signed contract that resulted from the original bid and any amendments including change of work scope, additions, extension, change orders, etc. agreed to by the parties that have not been subject open bid procedures.

(e) In the event the rates are amended at any time during the period of this Contract, Contractor shall adjust, at no additional cost to the Owner, the rates paid in such manner as to at all times be not less than the then current prevailing wage rate schedule issued by the State of Alaska. Contractor shall in addition thereto comply with all other applicable provisions of Alaska Statutes, Title 36, Chapter 5 [Wages and Hours of Labor]. Contractor further expressly acknowledges and agrees that prior to bidding on this Contract and the Project, and at the time of submitting its bid and entering into the Contract, it has obtained and fully informed itself of the current wage rate schedule and Contractor by entering into this Contract, assumes full and sole responsibility to keep itself fully informed as to any changes made in the current wage scale required to be paid and will, at no additional cost to the Owner, adjust and pay the prevailing wage rates, as such are modified from time to time, at all times during the performance of the Contract.

(f) The Contractor shall submit to the State of Alaska, Department of Labor, a certified payroll on a form suitable to the Department of Labor each week as required by

law, with copies thereof to the Owner if requested, and submit to the Owner an executed Minimum Wage Affidavit with each pay request and at the end of the project. The affidavit shall be in the form included in the Contract documents.

(g) Contractor agrees:

(1) that the Contractor, and his subcontractors, shall pay all employees unconditionally and not less than once a week;

(2) that wages shall not be less than those stated in the most current Minimum Wage Schedule published by the State Department of Labor regardless of the contractual relationship between the Contractor or subcontractors and laborers, mechanics, or field surveyors;

(3) that 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;

(4) that the Owner is authorized to 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:

(a) the rates of wages required by the Contract to be paid laborers, mechanics, or field surveyors on the work,

(b) the rates of wages in fact received by laborers, mechanics or field surveyors, and

(c) if it is found that a laborer, mechanic, or field surveyor employed by the Contractor or Subcontractor has been or is being paid a rate of wages less than the rate of wages required by the Contract to be paid, the Owner may, by written notice to the Contractor, terminate the Contractor's right to proceed with the work or the part of the work for which there is a failure to pay the required wages and to prosecute the work to completion by contract or otherwise, and the Contractor and his sureties shall be liable to the Owner for all costs and expense incurred thereby and for any excess costs in completing the work. (AS 36.05.070).

### Section 33: Affirmative Action.

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

employees and applicants for employment, notices setting forth the provisions of this subsection.

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

(c) Contractor will send to each labor union or representative of workers and with which it has a collective-bargaining agreement or other contract or understanding, a notice advising the said labor union or worker's representative of Contractor commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

(f) The Contractor will include the provisions paragraphs (a) through (e) of this section in every contract, and will require the inclusion of these provisions in every subcontract entered into by any of its subcontractors, so that such provisions will be binding upon each Subcontractor, as the case may be. For the purpose of including such provisions in any construction, maintenance, or service contract or subcontract, as required hereby, the term "Contractor" and the term "Subcontractor" may be changed to reflect appropriately the name or designation of the parties of such contract or subcontract.

(g) The Contractor agrees that he will fully cooperate with the office or agency of the State of Alaska which seeks to deal with the problem of unlawful or invidious discrimination, and with all other State efforts to guarantee fair employment practices under this Contract, and said Contractor will comply promptly with all requests and directions from the State Commission of Human Rights or any of its officers or against relating to prevention of discriminatory employment practice.

(h) Full cooperation as expressed in the foregoing clause (g) shall include, but not be limited to, being a witness in any proceeding involving questions of unlawful or invidious discrimination if such is deemed necessary by any official or agency of the State of Alaska, permitting employees of said Contractor to be witnesses or complainants in any proceeding involving questions of unlawful or invidious discrimination, if such is deemed necessary by any official or agency of the State of Alaska, or the Owner, participating in meetings, submitting periodic reports on the equal employment aspects of present and future employment, assisting in inspection of

relevant facilities, and promptly complying with all State directives deemed essential by any office or agency of the State of Alaska, or the Owner, to insure compliance with all Federal and State laws, regulations, and policies pertaining to the prevention of discriminatory employment practices.

(i) Failure to perform any of the above agreements pertaining to equal employment opportunities shall be deemed a material breach of the Contract and sufficient grounds for termination thereof for cause.

Section 34: Employment of Local Residents.

Contractor shall, to the extent required by law, comply with the employment preference provisions of Alaska Statutes 36.10.010 et seq.

Section 35: Notice to Proceed.

Within ten (10) days after submittal by the Contractor of all required documents, and the execution of the Contract by the Owner, written Notice to Proceed will be given by the Owner to the Contractor. Unless otherwise specified in the Notice to Proceed, the Contractor shall begin construction immediately upon receipt of the Notice to Proceed and shall continue regularly thereafter, unless otherwise directed in writing by the Owner, with such work force, materials and equipment as to assure construction progress in accordance with the construction schedule, if any, and that construction is complete within the construction time stated in the Contract Documents.

Section 36: Time.

All times and time limits stated in the Contract Documents shall be of the essence of the Contract. All references to days shall mean calendar days and the time within which acts are to be done shall be computed by excluding the first and including the last day, and if the last day is a Sunday or legal holiday where the act is to be performed, the act shall be completed on the next business day.

Section 37: Construction Time.

The Contractor agrees to complete the construction called for in the Contract within the number of days, or by the date specified, for completion of Construction set forth in the Agreement, or in the event that the time for completion is extended by Change Order as provided herein, then within the additional days by which the time is so extended. All changes in Construction Time shall be made only by Change Orders to the Contract.

Section 38: Construction Schedule.

(a) A Construction Schedule, if required, shall be as required by the Special Conditions in the form of either a time bar diagram showing certain of the various operations necessary to complete the construction, including the starting and

completion date of each operation shown, or the Construction Schedule shall be prepared by the critical path method and shall set forth a network analysis, which shall consist of an arrow diagram, tabulation of activities, estimated time and starting and completion date of each activity and an indication of the critical path.

(b) In the event progress payments are provided for and authorized in the Special Conditions, the Contractor's Requests for Payment will be considered and payments will be approved by the Owner on the basis of the Contractor's actual progress in relation to the dates shown in the Construction Schedule for completion of various parts of the operations. If the actual progress fails to meet the Construction Schedule, the Contractor shall increase its work force and equipment at its own expense as required to bring the actual progress of the operations into conformance with the Construction Schedule.

(c) During the course of construction the Contractor shall enter on the Construction Schedule its estimate of progress at the end of each calendar month, or at such more frequent intervals as directed by the Engineer, and shall deliver to the Owner two (2) copies thereof with each submittal of the Contractor's Request for Payment. All changes of Construction Schedule shall be made as Change Orders to the Contract.

Section 39: Changes in construction.

(a) If the Contractor claims that the Engineer's Instructions or additional requirements of the Owner, by drawings or otherwise, entitle the Contractor to additional payment or extension of time under the Contract, or both, the Contractor shall deliver to the Owner a written proposal of changes in Total Contract Amount and Construction Time within ten (10) days after the receipt of such instructions or requirements and before proceeding to execute the changes. Failure of the Contractor to deliver such a proposal shall constitute a waiver by the Contractor of any claim for additional payment or extension of time. If the Owner and the Contractor are in agreement as to changes in Total Contract Amount and Construction Time, a Change Order to the Contract will be issued for approval and execution by the Owner and Contractor.

(b) By proper action of its governing body and without invalidating the Contract, the Owner may order changes in the Contract Documents requiring changes in the construction, order changes in the quantities of the unit price items or make other changes in the Contract provided such changes are within the general scope of the Contract. No official, employee, agent or representative of the Owner, with the exception of the governing body empowered to accept and authorize execution of the Contract, shall have power to authorize any change in the Contract. It shall be the responsibility of the Contractor, before proceeding with any change, except a change which is an emergency in the opinion of the Owner, to determine that the execution of a Change Order has been properly authorized on behalf of the Owner by its governing body.

(c) When a change in construction is ordered by the Owner, a Change Order shall be executed by the Owner and the Contractor; except that the Contractor hereby

agrees that changes in the construction for which the Special Conditions or other provisions of the Contract provides that the Contractor is to be reimbursed on the basis of cost plus certain allowances may be made by the Owner, and the Contractor hereby accepts such Change Orders.

(d) When a change in quantities is ordered by the Owner, a Change Order shall be executed by the Owner and the Contractor; except that the Contractor hereby agrees to (1) increases of quantities of unit price items of basic units of construction not exceeding twenty-five percent (25%) of the bid quantities unless otherwise specified in the Special Conditions, (2) increases in quantities of unit price items of integrated units of construction in the aggregate not exceeding twenty-five percent (25%) of the Total Contract Amount, (3) changes in work or quantities for which the Contract provides that the Contractor is to be reimbursed on the basis of cost plus certain allowances, and (4) reductions of quantities of unit price items of basic or integrated units of construction of any amount may be made by the Owner, and the Contractor hereby accepts such Change Orders.

(e) The Contractor shall notify the Engineer in advance of the exact time of commencing any change in the construction or change in quantities where payment is on the basis of cost plus certain allowances and shall keep the Engineer fully informed at all times of the progress of said change and the materials, equipment, and labor involved. The Contractor shall submit to the Engineer a written report of the progress and costs incident to such change on the day following the day during which said change was being carried on. Failure to do so shall constitute a waiver of any and all claims for additional compensation for such changes by the Contractor.

#### Section 40: Extension of Time.

(a) Should the completion of the construction required under the Contract be delayed beyond the time herein specified for completion, the Owner may grant the Contractor additional time for completion by executing a Change Order modifying the Construction Time and Construction Schedule. If the failure of the Contractor to complete the construction within said specified time results from unavoidable delay as hereinafter defined, the Construction Time shall be extended by the number of days lost as a result of the unavoidable delay, provided, however, that the Constructor shall make a claim to the Owner in writing for such extension of time as herein provided. In considering applications for extension of time, the Engineer will classify delays according to the following definitions:

(1) Unavoidable delays in the prosecution or completion of the construction shall include all delays which result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of reasonable care, prudence, foresight and diligence on the part of the Contractor or its Subcontractors. Delay in completion due to contract modifications ordered by the Owner, unforeseeable delays in the completion of the construction of other contractors employed by the Owner, floods, fire, labor strikes, war, the public

enemy and Acts of God will be considered unavoidable delays, insofar as they necessarily interfere with the Contractor's completion of the construction. DELAY DUE TO ADVERSE WEATHER CONDITIONS, WILL NOT BE REGARDED AS UNAVOIDABLE DELAYS AS THE CONTRACTOR MUST PLAN ITS CONSTRUCTION WITH PRUDENT ALLOWANCE FOR SUCH CONDITIONS AND IN PARTICULAR, AS SUCH CONDITIONS EXIST IN KETCHIKAN, ALASKA, AND ENVIRONS.

(2) Avoidable delays in the prosecution or completion of the construction shall include all delays which in the opinion of the Engineer could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or its Subcontractors. Delays in the prosecution of parts of the construction which may in themselves be unavoidable but do not necessarily prevent or delay the prosecution of other parts of the construction nor the completion of the whole construction within the time herein specified; reasonable loss of time resulting from the necessity of submitting Shop Drawings to the Owner for review and from the making of surveys, measurements, and observations; and such interruptions as may occur in the prosecution of the work on account of the reasonable interference of other contractors employed by the Owner which do not necessarily prevent the completion of the whole construction within the time agreed upon and delays due to adverse weather conditions, shall constitute avoidable delays within the meaning of the Contract.

(b) Claims for extension of time shall be made in writing to the Owner no later than five (5) days after occurrence of the event causing the delay. In the event of continuing cause of delay, only one (1) claim shall be necessary. Contractor agrees that failure to make such claim within the time specified shall constitute a binding waiver of such claim.

(c) No claim for delay shall be allowed on account of failure to furnish Construction Drawings until ten (10) days after written request for such drawings has been made by the Contractor to the Owner. There may be some Construction Drawings which cannot be made until certain work has been done by the Contractor. Request for such Construction Drawings shall not be effective, so as to start the running of the ten (10) day period, until the Contractor's work has advanced to the point which will enable and require such Construction Drawings to be made.

#### Section 41: Owner's Use of Construction.

(a) The Owner shall have the right to take possession of, use and collect revenues from any completed, partially completed, satisfactory or unsatisfactory portions of the construction after the time for completion of the entire construction has expired, but such taking possession and use shall not be deemed an acceptance of any construction not completed in accordance with the Contract Documents.

(b) The Contractor shall not be entitled to any extra compensation for or

extension of time due to costs to the Contractor arising from the use of any portion of the construction by the Owner.

Section 42: Payment of The Contract Amount.

(a) The Owner hereby agrees to pay to the Contractor as full compensation for the timely, proper and complete performance of the Contract a sum of money as follows:

(1) Total of Lump Sum Prices. If the Total Contract Amount is a lump sum price, or the total of lump sum prices, such amounts; or

(2) Total of Unit Prices. If the Total Contract Amount is computed from the actual measured quantities in the completed construction at the unit prices for construction listed in the Bid Schedule of the Contractor's Bid Proposal, such amounts; or

(3) Total of Lump Sum Plus Unit Prices. If the Total Contract Amount is a combination of (1) and (2) above, the total of such amounts; provided, said sum of money is further properly adjusted in accordance with the applicable provisions of the Contract.

(b) The making of any payment to the Contractor under the Contract shall not relieve the Contractor of any obligations thereunder. The Contractor is obligated to complete the Contract in its entirety and to deliver to the Owner such completed construction as is specified in the Contract. The Contractor shall be obligated to repair, replace, restore, or rebuild any fully or partially completed construction required to be provided under the Contract until the Contract is fully performed and the Owner gives final acceptance in writing of the work, except that the Contractor's warranty and bonds shall remain in force for the period provided herein and the Contract Documents.

Section 43: Payment For Changes.

(a) Payment for increases of quantities of unit price items of integrated units of construction which in the aggregate do not exceed twenty-five (25%) percent of the Total Contract Amount, and for increases of quantities of unit price items of basic units of construction which do not exceed twenty-five (25%) percent of the bid quantities, and for all quantities of basic and integrated units of construction less than the bid quantities, unless otherwise specified in the Special Conditions, shall be made at the unit prices in the Bid Schedule in the Contractor's Bid Proposal.

(b) Payment for all changes in lump sum items and for that part of the changes in quantities which are increases of quantities of unit price items in excess of twenty-five percent (25%) of the bid quantities for basic units of construction or in excess of twenty-five percent (25%) of the Total Contract Amount for integrated units of construction shall, at the option of the Owner, be determined in one of the following

ways:

(1) by Contractor's proposal and Owner's acceptance of reasonable unit prices, or

(2) by Contractor's proposal and Owner's acceptance of reasonable lump sum prices, or

(3) by payment to the Contractor on a cost basis plus certain allowances as follows:

<u>Items for which payment will be Made on a cost plus basis</u>	<u>Percentage Allowance for Overhead and profit in addition to net</u>
Labor	20%
Materials and equipment	10%
Use of Equipment	15%

The net costs of items for which payment shall be made on a cost plus basis shall be computed as follows:

(c) Labor. For all labor, including such foreman supervision as may be necessary, the Contractor shall be paid the payroll cost of such labor and supervision, but not exceeding the current prevailing rates of wages in the locality where the work is performed, applicable health and welfare benefits, social security, unemployment compensation, and other occupational taxes, for each hour that labor and foreman supervision are actually engaged upon such construction, plus that portion of the cost prorated on the basis of time worked, of travel time, subsistence, and other labor benefits which are an obligation of the Contractor under the contractor-union labor agreement, if any, applicable to the Project.

(d) Materials and Equipment. For all materials and equipment incorporated in the completed construction, the Contractor shall be paid its actual invoice cost, including actual freight and express charges, less all offered or available discounts, regardless of whether or not they may have been taken.

The Contractor shall furnish as evidence of all charges for materials and equipment, valid copies of vendor's invoices, including freight and express bills. For such materials as may be furnished from the Contractor's stocks for which an invoice is not available, the Contractor shall furnish an affidavit certifying to its actual cost of such materials.

In the event that the Contractor's cost of such materials and equipment furnished is excessive in the opinion of the Engineer, or if the Contractor does not furnish satisfactory evidence of its costs, the Owner reserves the right to establish the cost of all or a part of such materials delivered to the location of the Project at the lowest

current wholesale prices less all applicable discounts at which said materials and equipment are available to the Contractor in the quantities required.

The Owner reserves the right to furnish such materials and equipment as it deems advisable, and the Contractor shall receive no payment for costs or allowances on such materials.

(e) Use of Equipment.

(1) Contractor-Owned Equipment. For Contractor-owned equipment, including machine-power tools, which is necessary or desirable for the construction in the opinion of the Engineer, 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., 1980 Ridder Park Drive, San Jose, California 95131, (hereinafter referred to as "Blue Book") and as modified by the Special Conditions, for the time that said equipment is in use on such construction, excluding therefrom all time that such equipment is inoperative because of malfunction or breakdown. Such rates shall be the monthly, weekly, daily or hourly rates applicable to the total period the equipment is in use, whichever is lowest and results in the least total amount.

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 Owner reserves the right to establish a rate based on similar equipment in the Blue Book on prevailing commercial rates in the area.

When Contractor-owned equipment is ordered by the Owner to be held at standby, the equipment rental will be paid at one-half (1/2) of the said rate; except, no percentage allowance shall be paid for equipment on ordered standby.

The said equipment rental rates are the maximum rates allowable for equipment of modern design in good working condition and shall include and be full compensation for depreciation, investment costs, and furnishing all fuel, oil, lubrication, repairs, maintenance, insurance and incidental expenses, and all other costs except labor for operation thereof. Individual pieces of equipment having a purchase price of Six Hundred Dollars (\$600.00) or less will be considered to be tools or small equipment, and no rental will be allowed on such tools or small equipment.

In the event the equipment is not at the Project site and the Engineer determines that such equipment would not have been required other than for the changed construction, and it is necessary to obtain such equipment exclusively for such changed construction, the actual costs of moving such equipment to and from the Project site will be paid to the Contractor from the nearest point such equipment is available, plus rental time during movement of the equipment at fifty percent (50%) of said rental rates.

(2) Equipment Furnished by Others. If Contractor-owned equipment is not available and equipment is rented from outside sources, payment will be made on the basis of actual invoice cost, except that when the equipment is ordered standby no percentage allowances will be made. Use of non-owned equipment at rates higher than those established by the "Rental Rate Blue Book for Construction Equipment," and as modified by the Special Conditions will not be allowed, except upon prior written approval of the Owner.

(f) Payment in Full. The compensation as herein provided, including the percentage allowance, shall be payment in full for all construction furnished hereunder and all expenses of every nature, kind and description, including, but not limited to, social security, unemployment compensation, occupational taxes and any other federal, state or local taxes, premiums on public liability and property damage insurance, use of small tools and equipment for which no separate payment is allowed, overhead expense and profit.

When construction is furnished by a Subcontractor to the Contractor, the percentage allowances shall be allowed only on the costs to the Subcontractors of labor, material and use of equipment.

The Contractor's cost records pertaining to work paid for hereunder shall be open to inspection and audit by representatives of the Owner during the period of the Contract and for not less than one (1) year after the acceptance of all construction. Where payment for labor, materials or use of equipment is based on the cost thereof to a Subcontractor or material supplier to the Contractor, the Contractor expressly warrants that the cost records of such Subcontractor or material supplier shall be open to inspection and audit by representatives of the Owner on the same terms and conditions as the cost records of the Contractor. If an audit is to be started more than sixty (60) days after the acceptance of all construction under the Contract, the Contractor will be given reasonable notice of the time when such audit is to begin.

(g) List of Construction Equipment. Within fifteen (15) days after Notice to Proceed, the Contractor shall furnish to the Engineer a list of construction equipment to be used in the Construction together with applicable Blue Book rental rates. For construction equipment for which Blue Book rental rates are not available, the Contractor shall provide its fully documented and established rental rates for such equipment under similar usage. Such rental rates shall become effective when approved by the Engineer. The Contractor shall furnish copies of fuel, oil, lubrication and normal maintenance of construction equipment applicable to the project location.

Section 44: Payment For Uncorrected Construction. If, in the opinion of the Engineer, it is inexpedient, impractical or otherwise not in the best interests of the Owner, to correct construction which has been damaged, which is faulty, or which has not been furnished in accordance with the Contract, the Owner shall have the right in its sole discretion, to accept such work and an equitable reduction in the Total Contract Amount shall be made.

Section 45: Progress payments.

(a) Partial payments of the Total Contract Amount, if such progress payments are to be allowed or made, will be made as specified in the Special Conditions. No progress payment will be allowed unless provided for in the Special Conditions.

(b) In the event progress payments are provided for in the Special Conditions, the Contractor may, unless otherwise provided in the Special Conditions, submit to the Engineer, not later than the tenth (10th) day of each calendar month, two (2) copies of a Contractor's Request for Payment for construction completed during the previous calendar month. Such Contractor's Request for Payment shall be in the form provided in the Special Conditions. With each Contractor's Request for Payment, the Contractor shall, if required, submit satisfactory evidence of payment for materials and labor, including payments to Subcontractors, made during the previous month. Each Contractor's Request for Payment shall be computed from construction completed on all items listed in the Bid Proposal less the amounts retained as provided in the Special Conditions or elsewhere in the Contract Documents, including any claims or offsets asserted against the Contractor, including any asserted by the Owner, and less all previously approved Contractor's Requests for Payment. Partial payment may be made for partially completed construction to the extent completed in the opinion of the Engineer.

(c) Partial payments on account of changes in construction may be made periodically in the same manner as partial payments on the Total Contract Amount.

(d) Within fifteen (15) days after proper submission of Contractor's Request for Payment by the Contractor, the Engineer will:

(1) recommend approval of the Contractor's Request for Payment submitted, or

(2) recommend approval of such other amount, if any, as is due the Contractor, in the opinion of the Engineer, informing the Contractor of the amount recommended, if any.

(e) The recommended Contractor's Request for Payment will be submitted to the Owner by the Engineer, and the Owner may authorize a partial payment to the Contractor, on the basis of the recommended Contractor's Request for Payment, but the Owner will withhold a retained amount as specified in the Special Conditions and such other amounts as are recommended by the Engineer or allowed to be retained by the Owner, including any claims or offsets asserted against the Contractor.

Section 46: Payments Withheld.

(a) In addition to the amount retained as otherwise provided in the Contract

Documents, the Owner may withhold such amounts from any payment as may be necessary in the opinion of the Engineer or Owner for protection from loss on account of

- (1) defective work not remedied;
- (2) claims filed or reasonable evidence indicating probable filing of claims;
- (3) failure of the Contractor to make proper and full payments promptly to its own employees or to the Subcontractors for materials or labor within a reasonable time after the Contractor has received the material or labor for incorporation into the construction;
- (4) a reasonable doubt that the Contract can be completed by another contractor for the balance then unpaid;
- (5) damage to the Owner, its buildings, structures, or property, to another contractor or subcontractor, or any other person, caused or contributed to by the Contractor, its officers, employees, agents, representatives, subcontractors, or persons for whom Contractor is responsible;
- (6) bankruptcy, receivership or insolvency of, or the pendency of such proceedings against the Contractor;
- (7) costs of the Owner for engineering tests, inspection costs, or other work, costs or expenses, to be reimbursed to the Owner by the Contractor as provided in the Contract Documents;
- (8) unsatisfactory prosecution of the work, or failure of the Contractor to complete any part of the construction in accordance with the Construction Schedule or the Contract;
- (9) credits refused by the Contractor for construction deleted; or
- (10) errors in previous partial payments, or claims by the Owner against the Contractor.

Section 47: Termination For Convenience.

(a) The performance of work under this Contract may be terminated by the Owner in accordance with this clause in whole, or from time to time in part, whenever the Owner shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Owner, the Contractor shall:

(1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Owner, in the manner, at the times, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated. In which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle in good faith all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner to the extent Owner may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title to the Owner, and deliver in the manner, at the times, and to the extent, if any, directed by the Owner, (i) the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the Owner;

(7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Owner, any property of the types referred to in (6) above: Provided, however, that the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the Owner; and provided further, that the proceeds of any such transfer of disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the Owner may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim, in the form and with the certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than sixty (60) days from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such sixty (60) day period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such sixty (60) day period or extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Owner may determine, on the basis of information available to the Owner, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Owner may agree upon the 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 clause, which amount or amounts may include a reasonable allowance for profit on work done: Provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated, and any claims or offsets against the Contractor pursuant to the Contract, or otherwise, by the Owner or other persons. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to paragraph (d).

(e) In the event of the failure of the Contractor and the Owner to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this section, the Owner shall determine, on the basis of information available to it, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

- (i) The cost of such work;
- (ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) above, exclusive of the amounts paid or

payable on account of supplies or materials delivered or services furnished by the Subcontractor prior to the effective date of the Notice of Termination of work under this Contract, which amounts shall be included in the cost on account of which payment is made under (i) above; and

- (iii) A sum, as profit on (i) above, determined by the Owner to be fair and reasonable: Provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(2) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b)(9); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (1) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated, and any claims or offsets by the Owner. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair value, as determined by the Owner, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Owner, or to a buyer pursuant to paragraph (b) (7).

(f) The Contractor shall have the right to dispute under Section 72 [Remedies] from any determination made by the Owner under paragraphs (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Owner has made a determination of the amount due under paragraphs (c) or (e) above, the Owner shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Owner or (2) if a proceeding is initiated under Section 72 [Remedies], the amount finally determined in such proceeding.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all un-liquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (2) any claim which the Owner may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Owner.

(h) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Owner a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; however, nothing contained herein shall limit the right of the Owner and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the Contract when said Contract does not contain an established contract price for such continued portion.

Section 48: Acceptance And Final Payment.

(a) When the Contractor has completed the construction in accordance with the terms of the Contract Documents and all construction has operated satisfactorily for not less than fifteen (15) days after completion, the Contractor shall submit to the Engineer a Contractor's Final Request for Payment; Statement Concerning Claims; Release, Waiver and Discharge of Claims and Liens on the forms included in the Contract Documents; and such other completed documents as may be required by the Owner for the release of any monies held.

(b) The Contractor's Final Request for Payment shall be prepared on the basis of the Contract, including all authorized Change Orders, but not inclusive of proposals or claims of the Contractor which have not been accepted by executed Change Order. The Contractor's Final Request for Payment shall constitute a complete waiver and release of any and all claims by the Contractor except for unsettled claims that have been properly and timely filed as provided in the Contract and as are expressly and specifically stated and set forth in the Contractor's Statement Concerning Claims on the form for such included in the Special Conditions.

(c) The Statement Concerning Claims shall warrant that the Contractor has fully completed the performance of the Contract and the construction included in the Contract and has fully paid for all labor, materials, equipment, services, taxes and all other costs and expenses of every nature and kind whatsoever resulting from the Contract, except for any itemized payments due but not yet made as set forth in the statement of claims. If any dispute exists between the Contractor and any person, firm or corporation to which the Contractor might be obligated in connection with the Contract, the Contractor shall state the name of claimant and amount and general nature of the claim against the Contractor. Such Statement Concerning Claims shall also state the amount and nature of all present and future claims that the Contractor may have against the Owner relative to the Contract in addition to the Contractor's Final Request for Payment.

(d) After receipt of a properly completed Statement Concerning Claims and Contractor's Final Request for Payment, the Engineer will, within a reasonable time, make a recommendation to the Owner relative to acceptance of the construction. Such

a recommendation shall not constitute a recommendation of acceptance of construction not furnished in accordance with the Contract. The Contractor's Final Request for Payment will be reviewed in the same manner as any other Contractor's Request for Payment.

(e) Upon receipt of the Statement Concerning Claims, and a Release and Waiver of Claims and Liens, in the form included in the Contract Documents, recommended Contractor's Final Request for Payment, any other documents necessary for the release of monies held, and the Engineer's recommendation relative to acceptance of the construction, the Owner will, within a reasonable time, take action on the Contractor's Final Request for Payment and on acceptance of the construction. Such action shall be subject to the conditions of the Performance Bond and Payment Bond, legal and contractual rights of the Owner, required warranties, and correction of faulty construction after final payment. The Owner shall have the right to retain from any payment then due the Contractor, so long as any bills or claims remain unsettled and outstanding, including any asserted by the Owner, a sum sufficient, in the opinion of the Owner to provide for the payment of the same. It is also understood and agreed that, in case of any breach by the Contractor of the provisions hereof, the Owner may retain from any payment or payments, which may become due hereunder, a sum sufficient, in the opinion of the Owner, to compensate for all damages occasioned by such breach, including in such damages any damages arising out of delay on the part of the Contractor.

(f) The acceptance of construction will be evidenced by a Notice of Acceptance of Construction in writing signed by a duly authorized official of the Owner in the manner provided for written notices. No other act of the Owner shall constitute acceptance of the construction.

(g) Thirty (30) days after the Owner has accepted the construction, as above provided, the Contractor may submit a Request for Payment of the Retained Amount; provided, however, that the Owner may also retain such additional amounts and for such lengths of time as may be required by law or by the Special Conditions. If any liens remain unsatisfied after Payment of the Retained Amount is made, the Contractor shall immediately reimburse the Owner such amounts as the Owner may have been compelled to pay in discharging such liens including all costs and reasonable attorneys' fees.

Section 49: Construction Furnished Prior to Notice to proceed. Notwithstanding any other provision of the Contract, the Owner shall not be obligated to accept or to pay for any construction furnished by the Contractor, prior to delivery of a written Notice to Proceed whether or not the Owner has knowledge of the furnishing of such construction.

Section 50: Sales And Similar Taxes. The Contractor shall timely pay all federal, state, and local sales, excise or other taxes or assessments incurred or required to be collected or paid by the Contractor.

Section 51: Credit. In the event construction is deleted or modified or specified material, equipment, method or process substituted so as to effect a reduction in cost, the Owner shall be entitled to a credit in an equitable amount.

Section 52: Owner's Operations. The Contractor shall schedule all construction so as not to interfere with the operations of the Owner. Where such interference is essential to prosecution of the construction special arrangements shall be made and the written consent of the Owner as to time and method obtained forty-eight (48) hours in advance of the construction.

Section 3: Overtime Inspection. In the event the Contractor elects to work on a Saturday, Sunday, a holiday, or longer than an eight-hour work shift on a regular working day, such work shall be considered as overtime work. On all such overtime work an Inspector, and a survey crew, if required, will be present, unless determined not necessary by the Owner. The Contractor shall reimburse the Owner for the full amount of the straight time plus overtime costs to the Owner for employees of the Owner required to work overtime hours.

The Contractor authorizes the Owner to deduct all such costs from any amounts due, or to become due the Contractor.

Overtime due to special construction problems, such as concrete finishing, asphalt rolling, making live sewer hookups, alleviating traffic problems, etc., will not be charged if the Engineer determines that the waiver of reimbursement of overtime charges is justified and deemed to be in the best interests of the Borough.

Section 54: Owner's Construction. The Owner reserves the right to furnish in connection with the Project, construction which is not included in the Contract either by the Owner's forces or by the forces of other contractors.

Section 55: Other Contracts.

(a) The Contractor shall ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be entered into by the Owner in the prosecution of the Project, to the end that the Contractor may perform the Contract in coordination with such other contracts, if any. Nothing herein contained shall be interpreted as granting to the Contractor exclusive occupancy of the Project site. The Contractor shall not cause any unreasonable hindrance or delay to any other contractor working on the Project. If, in the opinion of the Engineer, the performance of the Contract is likely to be interfered with by the simultaneous performance of some other contract or contracts to which the Owner is a party or by the Owner's own forces, the Owner may, but is not obligated to, decide which contractors shall cease a part of or all of their construction temporarily and which contractor shall continue, or whether the construction under all contracts can be coordinated so that all contractors may proceed simultaneously. The Owner shall not be responsible for any delays or damages

suffered or extra costs incurred by the Contractor resulting directly or indirectly from the performance, failure to perform or attempted performance by any other contractor of any other contract.

(b) The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their construction at the Project site and shall properly connect and coordinate its construction with theirs. If another contractor or contractors are working in the same area, with equal rights and privileges, it shall be the responsibility of the Contractor to make whatever arrangements with said other contractors as are necessary for the proper execution and coordination of the construction.

(c) If any part of the Contractor's construction depends upon the construction of any other contractor for proper execution or results, the Contractor shall inspect the other contractor's construction and, at least ten (10) days prior to the time the Contractor begins construction on such part, report to the Engineer in writing any defects in such other contractor's construction that renders it unsuitable for such proper execution and results. Failure on the part of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's construction as fit and proper for the reception of the Contractor's construction, except as to defects which may subsequently develop in the other contractor's construction.

(d) The Contractor agrees to save the Owner and the Engineer harmless from any claim, suit or demand of any other contractor by reason of the failure of the Contractor to conform with the Construction Schedule or construction time.

Section 56: Lands by Owner. Unless otherwise provided in the Special Conditions, the Owner will provide the lands upon which the construction under the Contract is to be furnished, together with the right-of-access to such lands. The Contractor shall confine its equipment, storage of materials, and construction operations to such limits as may be directed by the Owner, and shall not unreasonably encumber the premises with its materials; provided, however, such discretion by the Owner shall not impose upon the Owner any duty or responsibility for the safety or loss or damage to any equipment, materials, other property or project safety, all of such to remain the responsibility of Contractor.

Section 57: Lands by Contractor. The Contractor shall provide at its own expense and with no cost or liability to the Owner, any additional land and access thereto, not shown or described in the Contract Documents as provided by the Owner that may be required for temporary construction facilities or storage of materials. The Contractor shall confine its equipment, storage of materials and operation of its workmen to those areas described in the Contract Documents and such additional areas as it provides at its own expense.

Section 58: Employees. The Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ or continue to employ on the

Project anyone not skilled in the work assigned to it or any person unsatisfactory to the Owner. All employees who perform any work shall be properly licensed, and shall be the holders of all certificates of fitness, and permits as may be required by law.

Section 59: Project Safety.

(a) The Contractor shall exercise all precautions for the safety of its employees and of the general public and of the Owner's employees and property, and shall comply with all applicable provisions of federal, state, and municipal safety laws, building and construction codes, and the safety rules and other regulations of the Owner, including, but not limited to, the requirements of the U.S. Occupational Safety and Health Administration (OSHA) or applicable State statutes in lieu thereof. The Contractor shall also comply with the recommendations in the "Manual of Accident Prevention in Construction of the Associated General Contractors of America" insofar as applicable, unless such recommendations are incompatible with federal, state or municipal laws or regulations. Monthly reports of all lost-time accidents shall be promptly submitted to and shall include such data as are requested by the Owner.

(b) The Contractor shall enforce all instructions of the Owner regarding signs, advertising, fires, danger signals, barricades, and smoking, and shall require all persons employed in the construction to comply with all building, post or institutional regulations while on the premises. The Contractor shall require all employees to be familiar with and comply with the Owner's safety regulations. The Contractor shall not permit any part of any structure to be loaded with a weight exceeding its maximum allowable loading or that will otherwise jeopardize its safety.

(c) Existing traffic and street name signs which will interfere with construction shall be removed by the Contractor and stored in a safe place. These signs shall not be removed until the Engineer has so directed and until the necessary measures have been taken to safeguard traffic after the signs have been removed. Preservation and maintenance of the signs shall be the sole responsibility of the Contractor. Upon completion of the project, the Contractor will reset all such signs in their permanent location at no cost to the Owner.

(d) The Contractor shall provide adequate signs, barricades, signal lights and watchmen and take all necessary precautions for the protection of the construction and the safety of the public. All barricades and obstructions shall be protected at night by satisfactory signal lights which shall be kept lighted from sunset to sunrise. Barricades shall be constructed, painted, and placed in accordance with the manual on Uniform Traffic Control Devices, published by the United States Department of Transportation.

(e) The Contractor shall at all times so conduct its work as to ensure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the Project, and to ensure the protection of persons and property in a manner satisfactory to the Owner. No road or street shall be closed to the public except with the permission of the Owner and the proper governmental authority. Emergency

traffic such as police, fire and disaster units, shall be provided reasonable access at all times. The Contractor shall be liable for any damages which may result from his failure to provide such reasonable access.

(f) When work is being performed below the standards required herein, or other applicable standards, or when the Engineer or Owner believes the condition endangers the safety of the general public, employees of the Project, or any property, including the buildings or property of the Owner, the Engineer may immediately issue a written stop-work order describing the substandard work and deliver the same to the Contractor. The Contractor shall cease work and not resume work on the stopped portion of the project until acceptable remedial action has been taken. Such protective measures shall not be construed as releasing the Contractor of any obligation or liability arising under the Contract and shall be at no cost, expense, or liability, for stopping the work of otherwise, to the Owner.

#### Section 60: Instrument Surveys.

(a) The Owner will furnish the instrument surveys necessary to establish certain bench marks, base lines and property boundaries specifically noted on the Contract Drawings and such construction surveys, if any, as are specifically required to be provided by the Owner in the Special Conditions. From the information provided by the Owner, the Contractor shall develop and make such additional detailed surveys as are needed for construction, such as slope stakes, batter boards, stakes for pile locations and other working points, lines and elevations.

(b) All bench marks, base lines, and property boundaries, as originally established by the Owner, shall thereafter be maintained by the Contractor who shall be responsible for keeping their accuracy and who shall pay to the Owner the reasonable cost to the Owner of re-establishing them if they are disturbed. The Contractor shall notify the Engineer in writing at least ten (10) days in advance of the time the Contractor will commence work on any parts of the construction requiring surveys to be furnished by the Owner.

(c) The Contractor shall provide reasonable and necessary opportunities and facilities to the Engineer for setting points and making measurements during construction.

#### Section 61: Protection of Property.

(a) The Contractor shall continuously maintain full and adequate protection of all its construction, the Owner's buildings and other property and the adjacent public and private property from damage, injury, or loss arising from, or in relation to, the construction. The Contractor shall promptly pay for any damage, injury or loss resulting from the act or omission of Contractor or the lack of adequate protection, and upon the failure to do so the Owner shall be entitled to withhold and pay from any amounts otherwise due the Contractor, or from any retainage, any such claim for damages or

pursue any other remedy, including suspension or termination of the Contract without liability.

(b) The Contractor shall not enter upon public or private property for any purpose without obtaining permission from the proper public authority or private property owner. In the event of construction on state highways, city or public roads, or any public right-of-way, it will be the Contractor's responsibility to notify the authority having jurisdiction thereover before beginning construction and to ascertain that the schedule of operations proposed is satisfactory to the authority.

(c) Wherever construction under the Contract is undertaken on easements or rights-of-way over private property, or public easements, rights-of-way, or franchise, all construction operations shall be confined to the limits of such easement, right-of-way or franchise and be completed so as to cause the least amount of disturbance and a minimum amount of damage.

(d) Construction across public or private property shall be carried out in one (l) continuous operation with immediate restoration and cleanup of the construction area. If the Contractor should fail to perform such construction, restoration and cleanup continuously, the Owner may give the Contractor a written notice to do so. In the event of failure by the Contractor to complete such construction, restoration and cleanup within five (5) days after receipt of such notice, the Owner may complete the same to the extent the Owner deems advisable. The cost of all labor, material, supervision and other expenses incurred by the Owner in so doing shall be paid by the Contractor to the Owner and may be deducted from any payments due the Contractor under the Contract.

(e) The Contractor shall protect and maintain all underground or above-ground utilities and structures affected by the construction and all lawns, shrubs, trees, fences, and other improvements on property crossed by or adjacent to its operations, and all damage shall be repaired and restored by the Contractor at its expense in a satisfactory manner. The Contractor will be responsible for all damage caused by its construction to roads, highways, ditches, walls, bridges, culverts, utilities, barricades, lights or other property, whether such damage be at the Project site or elsewhere and the Contractor shall repair or replace at its own expense all such damage in a satisfactory manner.

(f) It is expressly understood that the Contractor shall restore, at Contractor's sole cost and expense, all property, whether public or private, the use of which is obtained by easement, permit or right-of-way, to a condition at least equal to its original condition. Before beginning construction the Contractor shall file with the Engineer properly identified and dated photographs of such property as may be designated on the Contract Drawings or described in the Special Conditions.

Section 62: Cutting And Patching. The Contractor shall at its own expense do all necessary cutting and patching of its construction that may be required in order to

properly receive the construction of other contractors on the project or as required by the Contract Documents. The Contractor shall restore all such cut or patched construction to a condition satisfactory to the Owner. The cost resulting from replacement of defective cutting and patching construction shall be borne by the Contractor.

Section 63: Cleanup. At the time of termination or suspension for an extended period of all or any portion of the construction, or at completion but before final acceptance by the Owner, the Contractor at its own expense shall remove from the Owner's property and from all public and private property, all of its equipment and such unused materials as the Owner has made no payment for, temporary structures, rubbish and waste materials resulting from its operations and leave the Project site in a neat and orderly fashion satisfactory to the Owner. The Contractor shall at all times during the progress of the construction maintain the site in as neat and orderly a condition as construction operations will permit. In the event the Contractor fails to do so, in addition to any other remedy, including declaring the Contractor in default, the Owner may remove and store such equipment and unused materials and dispose of rubbish and waste at the expense of the Contractor. The cost of such removal, storage and disposal may be deducted from any payment due the Contractor.

Section 64: Sanitary Provisions. The Contractor shall furnish and maintain temporary toilet facilities of a type, number and location satisfactory to the Owner and all public authorities having jurisdiction, for all workmen employed for the Project. The Contractor shall maintain the same in a sanitary condition from the beginning of the construction until completion and shall then remove the temporary toilet facilities and disinfect the premises.

Section 65: Index of Accounts. Prior to final payment, or at any other time if requested by Owner to evaluate any claim, or potential claim by the Contractor, and at the option of the Owner, the Contractor shall furnish to the Owner a complete accounting of the actual costs of labor, material, and other charges, and certified copies of all invoices for materials and payrolls for all labor incorporated into the Project.

Section 66: Existing Utilities And Improvements.

(a) The Contractor shall remove such existing improvements on the Project site as may be necessary for the performance of the construction and, unless otherwise specified in the Special Conditions, shall rebuild the existing improvements in as good a condition as found; provided that existing improvements which interfere with the performance of the construction shall be maintained by the Contractor until their removal is authorized or directed by the Owner.

(b) The Contractor shall make all necessary arrangements and do all things required to avoid interference with the maintenance and operation of power, telegraph, telephone, water, sewer, gas and other utility lines, properties, and facilities of every kind, all in a manner satisfactory to the Owners and operators thereof.

(c) If construction under the Contract crosses highways, railroads, streets, or other utilities under the jurisdiction of the state, borough, cities, federal government, or other public body, public utility, or private entity, the Contractor shall secure written permission from the proper authority before executing such construction. A copy of this written permission shall be filed with the Owner before any construction is started. The Contractor shall furnish a written release from the proper authority before final acceptance of the construction by the Owner.

(d) Existing utilities indicated anywhere on the Contract Drawings have been plotted from information currently available to the Engineer. The source of information generally consists of construction records and other data obtained verbally from officials associated with the particular utility. The data is shown on the Contract Drawings for whatever benefit the Contractor may derive, and unless specific instructions or data concerning certain utilities are set forth in the Special Conditions, the data shown on the Contract Drawings shall not necessarily be considered precise or complete, and the Owner and the Engineer make no guarantee as to completeness, precision or dimensions, and that other aboveground or underground utilities or facilities not shown on the Contract Drawings may be encountered during the course of construction. In any case, minor lines, such as water, gas and sewer may not be indicated. This shall in no way relieve the Contractor from its responsibility for maintenance of existing utilities and performance of the Contract. Under no circumstances will errors or omissions in location of existing utilities or improvements, whether they are visible from the surface, buried or otherwise obscured, be considered as a basis for additional compensation to the Contractor.

(e) The Contractor shall be responsible for all damage to existing utilities and facilities during construction and shall restore all damaged facilities to their original condition to the satisfaction of the Owner and the Owner of the utilities and facilities at no cost to the Owner.

Section 67: Independent Contractor; No Authority to Bind Owner. The Contractor is an independent Contractor and is not, and shall not be construed to be a partner, joint venturer, employee or agent of the Owner and shall not, and is not authorized to, enter into or make any contracts, agreements, or enter into any other understanding with any other person, corporation, partnership, joint venturer, or other entity, in the name of the Owner.

Section 68: No Third Party Beneficiaries. Nothing in this Contract shall be construed to give any person other than the Owner and the Contractor any legal or equitable right, remedy or claim under this Contract, but it shall be held to be for the sole and exclusive benefit of the Owner and the Contractor.

Section 69: Contractor Qualified. The Contractor expressly represents and warrants it is the holder of all professional, business or other licenses or permits and is qualified and capable of performing all of the work covered or called for by the Contract and is presently ready, able and willing to undertake and perform all of such work and services, and supply all necessary materials, in a good, safe, and workmanlike manner,

at the times, in the manner, and pursuant to the terms, conditions and provisions, and for the compensation and payments provided for in the Contract.

Section 70: Entire Agreement. This Contract, and any schedules, appendices or exhibits attached thereto set forth all the covenants, promises, agreements, conditions and understandings between the parties hereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth. Except as herein otherwise expressly provided, no contemporaneous or subsequent agreement, understanding, alteration, amendment, change or addition thereto, or any schedule, appendix, exhibit or attachment thereto shall be binding upon the parties hereto. This Contract constitutes a final, complete and exclusive statement of the agreement between the parties.

Section 71: Law Applicable. The laws of the State of Alaska shall govern the construction, validity, performance and enforcement of this Contract. Venue as to any action, claim, or proceeding arising out of, or based upon this Contract, including, but not limited to, any action for declaratory or injunctive relief, shall be the appropriate court sitting in the City of Ketchikan, First Judicial District, Alaska.

Section 72: Remedies. Except as may be otherwise provided in this Contract, all disputes, claims, counterclaims, and other matters in question between the Owner and the Contractor arising out of or relating to this Contract or the breach thereof will be decided in a court of competent jurisdiction.