

**District of Columbia Department of General Services**  
**Standard Contract Provisions**

**GENERAL PROVISIONS**

**(Architectural & Engineering Services Contract)**

## ARTICLE 1. DEFINITIONS

- A. "Contracting Officer" as used herein means the District official authorized to execute and administrate the Contract on behalf of the District. Within DGS, the Director is the Chief Contracting Officer. The Director may make delegations of procurement authority to additional contracting officers within DGS.
- B. "District" as used herein means the District of Columbia District of General Services, (DGS), a party to the Contract.
- C. "Architect-Engineer" means the individual, individuals, and or firm identified as the "Architect-Engineer" In the preamble of a contract.
- D. "Agreement" shall also mean "Contract" and vice versa and shall include any Addenda, Contract Form, Standard Contract Provisions, Instructions to Bidders, General Provisions, Labor Provisions, Performance and Payment Bonds, Specifications, Special Provisions, Contract Drawings, manufacturer's specifications, industry standards, Contract Documents, approved written Change Orders and Agreements required to acceptably complete the Contract, including authorized extensions thereof.

## ARTICLE 2. GENERAL

- A. The Contracting Officer shall have authority to take any action provided for herein on behalf of the District, including approval, certifications, vouchers, acceptance and changes within the scope of work.
- B. The Architect-Engineer's period of performance shall commence on the effective date as agreed and as specified in the scope of work or in each task order issued by the Contracting Officer and ends on the date all required services are satisfactorily completed and products delivered.
- C. All work shall be prosecuted under the full time direction of a principal officer or responsible representative of the Architect-Engineer, approved by the Contracting Officer. The design of architectural, structural, mechanical, plumbing, electrical, or other engineering features of the work shall be accomplished and/or reviewed and certified by architects or engineers registered to practice in the District of Columbia in the particular professional field involved.
- D. The Architect-Engineer shall furnish sufficient technical, supervisory and administrative personnel to insure the efficient prosecution of the work in accordance with the approved Project Schedule.
- E. The Architect-Engineer agrees that duly authorized representatives of the District shall have access at all reasonable times, to inspect and make copies of all notes, designs, drawings, specifications or other technical or non-technical data including but not limited to payroll of personnel on this Contract pertaining to the work to be performed under the Contract.

## ARTICLE 3. PROGRESS SCHEDULES AND REPORTS

- A. **Generally.** In addition to the requirements set forth in the Scope of Work and to the requirements set forth elsewhere in the Contract, the Architect-Engineer shall furnish progress reports monthly, biweekly and with each payment request, describing accomplishments,

decisions and overall progress made during the period covered by the report and including the most recent Project Schedule and as set forth in more detail in this Article 3.

- B. Monthly Reports.** The Architect-Engineer shall provide written reports to the District, at a minimum on a monthly basis, on the progress of the entire Work, including, but not limited to, a baseline schedule and schedule updates with narrative demonstrating the critical path of the Work in Primavera format in the latest available version or as designated by the Contracting Officer. The monthly written reports shall also include, at a minimum, Work accomplished, problems encountered, cost updates, an economic inclusion report, cash flow updates, quality assurance reports and other similar relevant data as the District may reasonably require.
- C. Biweekly Updates.** The Architect-Engineer shall also provide written update reports to the District on a biweekly basis which shall reflect actual conditions of Project progress as of the date of the update. The update shall reflect the actual progress of designs or construction, as the case may be, identify developing delays, regardless of their cause, and reflect the Architect-Engineer's best projection of the actual date by which Substantial Completion and Final Completion of the Project will be achieved. Via a narrative statement (not merely a critical path method schedule), the Architect-Engineer shall identify the causes of any potential delay and state what, in the Architect-Engineer's judgment, must be done to avoid or reduce that delay. The Architect-Engineer shall point out, in its narrative, changes that have occurred since the last update, including those related to major changes in the scope of work, activities modified since the last update, revised projections of durations, progress and completion, revisions to the schedule logic or assumptions, and other relevant changes. Any significant variance from the previous schedule or update shall also be identified in a narrative, together with the reasons for the variance and its impact on Project completion. All schedule updates shall be in the latest version of Primavera format and reasonably acceptable to the District. The District may make reasonable requests during the Project for changes to the format or for further explanation of information provided. Submission of updates showing that Substantial Completion or Final Completion of the Project will be achieved later than the applicable scheduled completion date shall not constitute requests for extension of time and shall not operate to change the scheduled completion date. The District's receipt of, and lack of objection to, any schedule update showing Substantial Completion or Final Completion later than the dates agreed upon shall not be regarded as the District's agreement that the Architect-Engineer may have an extension of time, or as a waiver of any of the District's rights, but merely as the Architect-Engineer's representation that, as a matter of fact, Substantial Completion or Final Completion of the Project may not be completed by the agreed upon date. Changes to the scheduled completion dates may be made only in the circumstances and only by the methods set forth in the Contract.
- D. Condition Precedent to Payment.** All payments to Architect-Engineer are contingent upon satisfactory performance of the terms and conditions set forth in the Contract as determined by the Contracting Officer. Requisitions for payment shall be accompanied by a Project Progress Report which shall include the information set forth in this Article 3 and a statement indicating the percentage of completion of all required services for the Project.

#### **ARTICLE 4. RESPONSIBILITY OF THE ARCHITECT-ENGINEER**

- A. Quality.** The Architect-Engineer shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawing, specifications, and other services

furnished. The Architect-Engineer shall, without additional compensation correct or revise any errors or deficiencies in his designs, drawings, specification and other services.

- B. Scope of Work.** The Architect-Engineer shall accomplish the design services required pursuant to the scope of work or under each task order. These services shall include but not limited to the services required to enable the District to award the related construction contract pursuant to standard District procedures, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price set forth in the Contract.
1. If bids or proposals are not solicited within 180 days following the District's acceptance of the services to be provided under the scope of work or task order, shall prepare an estimate of constructing the design submitted and such estimate will be used in lieu of bids or proposals to determine compliance with the funding limitation.
  2. If the bids or proposals for the construction contract received exceed such estimated price, the Architect-Engineer shall perform such redesign and other services as are necessary to permit contract award within such funding limitation. Such redesign services shall be performed at no increase in the price of the Contract. However, the Architect-Engineer shall not be required to perform such additional services at no cost to the District, if the unfavorable bids or proposals are the results of unforeseeable causes beyond the control and without the fault and negligence of the Architect-Engineer.
- C. Designing to Budget.** The Architect-Engineer shall promptly advise the Contracting Officer if the Architect-Engineer finds that the Project design will exceed or is likely to exceed the funding limitations and the Architect-Engineer is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Architect-Engineer's revised estimate of construction cost. The Contracting Officer may, if he determines that the estimated construction contract price set forth in the scope of work or task order is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope of materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth elsewhere in the Contract or he may adjust such estimated construction contract price.
- D. Project Management and Inspection Entity.** In the event the Contract requires the Architect-Engineer to provide construction period services, the Architect-Engineer shall also, at intervals of no less than once per week, be responsible for:
1. *Visits to Site and Observation of Construction.* An Architect-Engineer representative who is knowledgeable of the Project and competent in each discipline which has trade activities and stages of construction being performed shall visit the site at intervals to observe as an experienced and qualified design professional the progress and quality of the various aspects of the contractor's Work. Based on information obtained during such visits and on such observations, the Architect-Engineer shall endeavor to determine whether such Work is proceeding in accordance with the Contract Documents and shall keep the District informed of the general progress of the Work in relation to the overall schedule. The Architect-Engineer shall document the site visit in writing and shall submit his findings in accordance with the report requirements set forth in Article 3 herein.

2. *Inspections of Work in Progress by the Architect-Engineer.* During his periodic visits to the Site to observe the Work in progress, the Architect-Engineer shall, as a minimum, spot check the Work installed and the Work in progress to determine compliance with the requirements of the Contract Documents and the codes and installation/workmanship standards listed therein. Defective and noncompliant Work shall be noted in the Architect-Engineer's reports and pointed out to the Contracting Officer and Program Manager. The Architect-Engineer shall identify for the Project Manager any specific checks or inspections to be made. The results of these inspections shall be made a part of the Project's daily log and reports. The Architect-Engineer shall document the inspection in writing.
  3. *Supplemental Inspections and Tests.* For Work not in compliance with the Contract Documents, the Architect-Engineer shall, with the agency's approval, require additional or supplemental inspection or testing. The Architect-Engineer shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents and shall determine whether their content complies with the requirements of each. The Architect-Engineer shall also determine whether the results certified indicate compliance with the Contract Documents. The Architect-Engineer shall document the inspection in writing.
  4. *Defective Work.* During its site visits and based on its observation during such visits, the Architect-Engineer may disapprove or reject contractor's Work, or any portion thereof, while the Work is in progress if Architect-Engineer believes that such Work does not conform to the Contract Documents, including the approved shop drawings or other submittals. The Architect-Engineer may also recommend that the District reject any Work which it believes will not result in a completed Project that conforms generally to the Contract Documents or that it believes will prejudice the integrity of the design as reflected in the Contract Documents. The Architect-Engineer shall document the Defective Work in writing.
- E. Code and Regulatory Compliance.** The Architect-Engineer is responsible for designing the project and administering the construction phase of the Project in accordance with applicable District of Columbia Codes and other regulatory requirements applicable to the Project. Nothing contained herein shall be construed as relieving any Architect-Engineer, professional design consultant, contractor, supplier or any other participant from any professional or legal responsibility for performance. Reviews, comments and approvals by the District of General Services and its Divisions, or any employee or official of the District, in no way absolve any other person, firm or corporation involved in the Project from their full responsibilities under the applicable laws, codes and professional practice as required in projects for the District of Columbia. Lack of comment by a District of Columbia reviewer does not relieve the Architect-Engineer from designing to meet the applicable Code or Architect-Engineer Manual requirements or applicable regulations related to water, sewer, fire department service, and other utilities.
1. *Additional Costs.* If the correction of a Code or regulatory violation results in a Change Order during construction, any additional costs incurred shall be borne by the party responsible for the violation. The District shall bear only the costs attributable to the actual Code or regulation-required enhancement of the Project.
  2. *Code Interpretation.* If the Architect-Engineer believes that a Code or a regulation is unclear as to meaning, he shall request a written opinion as to the applicable interpretation

from the applicable regulatory agency, as appropriate. The Architect-Engineer shall be entitled to rely on the written opinion, if any, which he receives.

- F. As-Built Drawings.** At completion of the Project, the Architect-Engineer shall prepare a full set of record drawings showing the "as-built" condition of the Project and including the locations of all utilities based on his own records and upon information supplied by the Construction Manager or Design-Builder on which the Architect-Engineer may rely. These drawings will consist of the original working drawings and the original of supplemental drawings and details modified to show the "as built" conditions both in paper, tracings, and electronic media. "As-built" drawings shall be turned over to the District as a condition precedent to Substantial Completion; final payment of the Architect-Engineer's fees shall not be due until the building is accepted by the District, the final Application for Payment is made to, in acceptable form, and accepted by the District, and record drawings and "as-built" drawings in the form of paper, tracings, and electronic media in the form of Compact Discs in latest version of AutoCAD. The District reserves the right to occupy the building, or portions thereof, prior to final acceptance.
- G. No Waiver.** Neither the District's review, approval or acceptance of, nor payment for, any of the services required under this Contract shall be construed to operate as a waiver or any rights under this Contract or of any cause of action arising out of the performance of this agreement, and the Architect-Engineer shall be and remain liable to the District in accordance with applicable law for all damages to the District caused by the Architect-Engineer's negligent or intentionally wrongful act, omission or default while performing any of the services under this Contract.
- H. Remedies Inclusive.** The rights and remedies of the District provided for under the contract are in addition to any other rights and remedies provided by law.

## **ARTICLE 5. PAYMENTS**

- A. Invoices.** The Architect-Engineer shall submit an invoice to the District along with District-required documentation. The invoice shall generally itemize the various phases or parts of the Total Contract Amount, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice. The invoice shall also include a certification statement signed by the Architect-Engineer stating that the Architect-Engineer has paid its consultants, subcontractors and suppliers their individual proportional share of all previous payments, including interest, received from the District. Invoices for reimbursables shall include documentation of costs for which reimbursement is sought. Invoices for Architect-Engineer Services being performed on an hourly rate basis shall show the technical classifications, names of the persons performing the Architect-Engineer Services, man hours expended, marked up hourly rates for the classification, and the extended cost amount.
- B. Invoice Disputes.** Unless there is a dispute about the compensation due the Architect-Engineer including, but not limited to, claims by the District against the Architect-Engineer, then within thirty (30) days after receipt by the District of the Architect-Engineer's acceptable invoice, which shall be considered the invoice receipt date, the District shall pay to the Architect-Engineer the amount approved less any retainage and less any prior payments or advances made to Architect-Engineer. The date on which payment is due shall be referred to as the Payment Date.

- C. Frequency.** Invoices prepared the Architect-Engineer relating to the amount and value of work and services performed by the Architect-Engineer under the Contract shall be made periodically (not more often than monthly) and sent to the District for payment, accompanied by such documentation and supporting data as may be required by the Contracting Officer.
- D. Retainage.** Upon approval of such invoice amounts by the Contracting Officer and presentation of proper documentation by the Architect-Engineer, payment of the invoice amount as determined above less agreed upon retainage and all previous payments shall be made as soon as practicable. Unless otherwise provided for in the Contract the retained payment percentage shall be 5%, provided, however, that if the Contracting Officer determines that the work is Substantially Complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the District, he may in his discretion release to the Architect-Engineer such excess amount.
- E. Final Payment.** Upon the satisfactory completion of the Work and formal notification of its final acceptance by the Contracting Officer, the Architect-Engineer shall be paid the unpaid balance of any money due hereunder, including retained percentages. Prior to such final payment under the Contract or prior to settlement upon termination of the Contract and as a condition precedent thereto, the Architect-Engineer shall execute and deliver to the Contracting Officer a release of all claims against the District arising under or by virtue of the Contract other than such claims, if any, as may be specifically excepted by the Architect-Engineer from the operation of the release in stated amounts to be set forth therein.
- F. Document Ownership.** All drawings, designs, specifications, architectural designs of buildings and structures, notes and other Architect-Engineer Work produced in the performance of this contract, or in contemplation thereof, and all as-built drawings produced after completion of the work shall be and remain the sole property of the District and may be used on any other work without additional cost to the District. With respect thereto the Architect-Engineer agrees not to assert any rights or to establish any claim under the design patent or copyright laws and not to publish or reproduce such matter in whole or in part or in any manner or form or authorize others so to do without the written consent of the District, until such time as the District may have released such matter to the public. Further, with respect to any architectural design which the District desires to protect by applying for and prosecuting a design patent application or otherwise, the Architect-Engineer agrees to furnish the Contracting Officer such duly executed instruments and other papers (prepared by the District) as are deemed necessary to vest in the District the rights granted it under this clause. The Architect-Engineer agrees to furnish and provide access to the originals or copies of all such materials on the request of the Contracting Officer for a period of three (3) years after completion for the project.
- G. Corrections of Work Post-Payment.** Notwithstanding the acceptance and approval by the District of any Services performed or Materials provided, the Architect-Engineer shall be responsible for the professional quality, technical accuracy and the coordination of all Materials, and Services furnished by the Architect-Engineer under the Contract. The Architect-Engineer shall, without additional compensation, correct or revise any errors or deficiencies or omissions in the Architect-Engineer's Materials and Services.
- H. Payment Not Waiver.** The District's review, approval or acceptance of, or payment for, any of the Materials and Services required under the Contract shall not constitute any representation, warranty or guaranty by the District as to the substance or quality of the matter reviewed,

approved or accepted and shall not be construed to operate as a waiver or estoppel of any of the District's rights or privileges under the Contract or of any cause of action arising out of the performance of the Contract. No person or firm shall rely in any way on such review, approval or acceptance by the District. The Architect-Engineer shall be and remain liable in accordance with Applicable Law for all damages to the District caused by the Architect-Engineer. Review, approval or acceptance by the District or the Contracting Officer under the Contract shall not constitute approval otherwise required by any of the District departments, boards, commissions, or other regulatory agencies in the exercise of their independent regulatory authority.

- I. **Errors and Omissions.** Without limiting the Architect-Engineer's responsibility set forth above, such responsibility, by way of illustration shall include the following: If any error or omission in the Construction Documents submitted by the Architect-Engineer requires a change in the Scope of Services or any portion thereof, the Architect-Engineer shall promptly complete such change at no additional cost to the District.
- J. **Compensation Disputes.** Disputes regarding the compensation due the Architect-Engineer may include, but are not limited to, the amount due, the value or percentage of the Architect-Engineer Services completed, defects or deficiencies in the Architect-Engineer Services, quality of the Architect-Engineer Services, compliance with the Contract Documents, completion itself, or negligent performance of professional services on the part of the Architect-Engineer. In the event of disputes, payment shall be mailed on or before the Payment Date for amounts and Architect-Engineer Services not in dispute, subject to any setoffs claimed by the District.
- K. **Adjustments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any invoice by the Architect-Engineer contains a defect or impropriety which would prevent payment by the Payment Date, the District shall notify the Architect-Engineer in writing of such defect or impropriety within ten (10) days after the invoice receipt date. Any disputed amounts determined by the District to be payable to the Architect-Engineer shall be due thirty (30) days from the date the dispute is resolved.
- L. **Payments to Subcontractors.** The Architect-Engineer shall make a payment to each of its Consultants, Subcontractors and Suppliers, not later than seven (7) calendar days after receipt of amounts paid to the Architect-Engineer by the District, in an amount equal to the proportionate share of the total payment, including any interest, received from the District attributable to the Architect-Engineer Services performed by Consultants and Subcontractors and materials furnished by Suppliers less a retainage of not more than five percent (5%), said retainage being the same money, not additional money, retained by the District from the payment to the Architect-Engineer.

## **ARTICLE 6. CHANGES**

- A. **Generally.** The Contracting Officer may at any time by written order make changes to the scope of services to be performed under each task order. If such changes cause an increase or decrease in the Architect-Engineer's cost of or time required for performance of any service under the Contract, upon approval of the Contracting Officer, an equitable adjustment shall be made and the Contract shall be modified in writing by the Contracting Officer accordingly. Any claim of the Architect-Engineer for adjustment under this clause must be made in writing to the Contracting Officer within ten (10) days from the date of receipt by the Architect-Engineer of the



notification of change unless the Contracting Officer grants a further period of time before the date of final payment under this contract. If the Architect-Engineer requests changes to the Scope of Services, the Architect-Engineer must demonstrate to the satisfaction of the District that the changes are necessary and not due to the acts or omissions of the Architect-Engineer. Generally, the time of performance of the Contract and/or any task order may be extended for the administrative convenience of the District or for other purposes whenever the Contracting Officer determines such action will not be a cause for additional fee or other related cost.

- B. Additional Compensation.** Compensation to the Architect-Engineer beyond the monetary limits set forth in the Contract shall only be made if and when a Change Order to the Contract is duly executed by the Parties. Nothing herein shall limit the District's ability to make changes to the Contract unilaterally.
- C. Designated Change Orders.** The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the Contract, including but not limited to changes
1. In the Contract drawings and specifications;
  2. In the method or manner of performance of the work;
  3. In the District furnished facilities, equipment, materials or services; or
  4. Directing acceleration in the performance of the work.

Nothing provided in this Article shall excuse the Architect-Engineer from proceeding with the prosecution of the work so changed.

- D. Other Change Orders.** Any other written order or an oral order (which term as used in this Section shall include direction, instruction, interpretation, or determination) from the Contracting Officer which causes any such change, shall be treated as a Change Order under this Article, provided that the Architect-Engineer gives the Contracting Officer written notice stating the date, circumstances and sources of the order and that the Architect-Engineer regards the order as a Change Order.
- E. General Requirements.** Except as herein provided, no order, statement or conduct of the Contracting Officer shall be treated as a change under this Article or entitle the Architect-Engineer to an equitable adjustment hereunder. If any change under this Article causes an increase or decrease in the Architect-Engineer's cost of, or the time required for, the performance of any part of the work under this Contract whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under (B) above shall be allowed for any cost incurred more than 20 days before the Architect-Engineer gives written notice as therein required unless this 20 days is extended by the Contracting Officer and provided further, that in case of defective drawings and specifications, the equitable adjustment shall include any increased cost reasonably incurred by the Architect-Engineer in attempting to comply with such defective drawings and specifications.
1. If the Architect-Engineer intends to assert a claim for an equitable adjustment under this Article, he must, within 30 days after receipt of a written Change Order under (A) above or

the furnishing of a written notice under (D) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Contracting Officer. The statement of claim hereunder may be included in the notice under (D) above.

2. With respect to the notification obligations of the Architect-Engineer hereunder, time is of the essence. A failure to provide timely notice constitutes waiver of the claim. No claim by the Architect-Engineer for an equitable adjustment hereunder shall be allowed if asserted after final payment under the Contract.

**F. Change Order Breakdown.** Contract prices shall be used for Change Order work where work is of similar nature; no other costs, overhead or profit will be allowed.

1. Where Contract prices are not appropriate and the nature of the change is known in advance of construction, the parties shall attempt to agree on a fully justifiable price adjustment and/or adjustment of completion time.
2. When Contract prices are not appropriate, or the parties fail to agree on equitable adjustment, or in processing claims, equitable adjustment for Change Order work shall be per this Article and Article 7 and shall be based upon the breakdown shown in following subsections a) through g). The Architect-Engineer shall assemble a complete cost breakdown that lists and substantiates each item of work and each item of cost.
  - a) *Labor*—Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable by the District. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to 18 percent of direct labor costs may be allowed. In addition, up to 20 percent of direct plus indirect labor costs may be allowed for overhead and profit.
  - b) *Bond*—Payment for additional bond cost will be made per bond rate schedule submitted to the District with the executed Contract.
  - c) *Materials*—Payment for cost of required materials will be F.O.B. destination (the job site) with an allowance for overhead and profit.
  - d) *Rented Equipment*—Payment for required equipment rented from a third party company that is neither an affiliate of, nor a subsidiary of, the Architect-Engineer will be based on receipted invoices which shall not exceed rates given in the current edition of the Rental Rate Blue Book for Construction Equipment published by Data Quest. If actual rental rates exceed manual rates, written justification shall be furnished to the Contracting Officer for consideration. No additional allowance will be made for overhead and profit. The Architect-Engineer shall submit written certification to the Contracting Officer that any required rented equipment is neither owned by nor rented from the Architect-Engineer or an affiliate of or subsidiary of the Architect-Engineer.
  - e) *Architect-Engineer's Equipment*—Payment for required equipment owned by the Architect-Engineer or an affiliate of the Architect-Engineer will be based solely on an

hourly rate derived by dividing the current appropriate monthly rate by 176 hours. No payment will be made under any circumstances for repair costs, freight and transportation charges, fuel, lubricants, insurance, any other costs and expenses, or overhead and profit. Payment for such equipment made idle by delays attributable to the District will be based on one-half the derived hourly rate under this subsection.

- f) *Miscellaneous*—No additional allowance will be made for general superintendence, use of small tools and other costs for which no specific allowance is herein provided.
- g) *Subcontract Work*—Payment for additional necessary subcontract work will be based on applicable procedures in a) through f), to which total additional subcontract work, up to an additional 10 percent, may be allowed for the Architect-Engineer's overhead and profit.

## **ARTICLE 7.   EQUITABLE ADJUSTMENT OF CONTRACT TERMS**

The Architect-Engineer is entitled to an equitable adjustment of the contract terms whenever the following situations develop:

### **A. Differing Site Conditions.**

1. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Architect-Engineer, upon discovering such conditions, shall promptly notify the Contracting Officer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.
2. Upon written notification, the Contracting Officer will investigate the conditions, and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The Contracting Officer will notify the Architect-Engineer of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment which results in a benefit to the Architect-Engineer will be allowed unless the Architect-Engineer has provided the required written notice; a failure to notify the Contracting Officer of the changed conditions prior to work being disturbed by said conditions shall constitute a permanent waiver of all right to compensation related to the changed conditions by the Architect-Engineer.
4. No contract adjustment will be allowed under this clause for any effects caused on unchanged work.

### **B. Suspension of Work Ordered by Contracting Officer.**

1. If the performance of all or any portion of the work is suspended or delayed by the Contracting Officer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Architect-Engineer believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Architect-Engineer shall submit to the Contracting Officer in writing a request for equitable

adjustment within seven (7) calendar days of receipt of the notice to resume work. The request shall set forth the reasons and support for such adjustment.

2. Upon receipt, the Contracting Officer will evaluate the Architect-Engineer's request. If the Contracting Officer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control or and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Contracting Officer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contracting Officer will notify the Contract of his/her determination whether or not an adjustment of the contract is warranted.
3. No contract adjustment will be allowed unless the Architect-Engineer has submitted the request for adjustment within the time prescribed; a failure to submit a request for adjustment in the time prescribed shall constitute waiver of all right to compensation related to the suspension of work by the Architect-Engineer.
4. No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term of condition of this contract.

**C. Significant Changes in Character of Work.**

1. The Contracting Officer reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the Architect-Engineer agrees to perform the work as altered.
2. If the alterations or changes in quantities significantly change the character of the work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Architect-Engineer in such amount as the Contracting Officer may determine to be fair and reasonable.
3. If the alterations or changes in quantities significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.
4. The term "significant change" shall be construed to apply only to the following circumstances:
  - a. When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction; or
  - b. When an item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in the case of a decrease below 75 percent, to the actual amount of work performed.

If the parties fail to agree upon the adjustment to be made, the dispute shall be processed as provided in Article 10 hereof entitled "Disputes". Nothing provided in this section shall excuse the Architect-Engineer from proceeding with the prosecution of work so changed.

## ARTICLE 8. TERMINATION

- A. Termination for Default.** Termination, whether for default or convenience is not a Government claim. The Contracting Officer may terminate the Contract for default, in whole or in part, if the termination is in the best interests of the Government, and the Architect-Engineer does any of the following:
1. Fails to deliver the goods or complete the work or services within the time specified in the contract or any modification;
  2. Fails to make sufficient progress on contract performance so as to endanger performance of the contract within the time specified or in the manner specified in the contract;
  3. Fails or refuses to go forward with the work in accordance with the direction of the Contracting Officer;
  4. Expresses through word or conduct an intention not to complete the work in accordance with the directions of the Contracting Officer;
  5. Fails to perform any of the other provisions of the contract;
  6. Materially deviates from the representations and capabilities set forth in the Architect-Engineer's response to the solicitation.
- B. Final Decision of Contracting Officer.** A termination for default is a final decision of a contracting officer. In order to contest a termination for default, the contractor must submit a certified request to convert the termination for default to a termination for convenience with all documents supporting such conversion and comply with all contract provisions and laws relating to terminations for convenience, including the submission of a certified termination for convenience settlement proposal. The submission of the certified request for conversion to a termination for convenience and certified termination settlement proposal to the contracting officer must occur prior to 90 days from the date of the contracting officer's final decision.
- C. Delays.** If the Architect-Engineer refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in the Contract, or any extension thereof, or fails to complete said work within specified time, the District may, by written notice to the Architect-Engineer, terminate his right to proceed with the work or such part of the work involving the delay. In such event the District may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may have been paid for by the District or may be on the site of the work and necessary therefore. Whether or not the Architect-Engineer's right to proceed with the work is terminated, he and his sureties shall be liable for any liability to the District resulting from his refusal or failure to complete the work within the specified time.
1. If fixed and agreed liquidated damages are provided in the Contract and if the District does not so terminate the Architect-Engineer's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed and accepted.
  2. The Architect-Engineer's right to proceed shall not be so terminated nor the Architect-Engineer charged with resulting damage if:

- a) The delay in the completion the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Architect-Engineer, including but not restricted to acts of God, acts of the public enemy, acts of the District in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, climatic conditions beyond the normal which could be anticipated, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Architect-Engineer and such subcontractors or suppliers (the term subcontractors or suppliers shall mean subcontractors or suppliers at any tier); and
  - b) The Architect-Engineer, within 72 hours from the beginning of any such delay, (unless the Contracting Officer grants a further period of time before the date of final payment under the Contract) notifies the Contracting Officer in writing of the causes of delay.
3. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Article 7 herein.
  4. If, after notice of termination of the Architect-Engineer's right to proceed under the provisions of this Article, it is determined for any reason that the Architect-Engineer was not in default under the provisions of this Article, or that the delay was excusable under the provisions of this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of Article 7 herein.
  5. The rights and remedies of the District provided in this Article are in addition to any other rights and remedies provided by law or under the Contract.
  6. The District may, by written notice, terminate the Contract or a portion thereof as a result of an Executive Order of the President of the United States with respect to the prosecution of war or in the interest of national defense. When the Contract is so terminated, no claim for loss of anticipated profits will be permitted.

#### **D. Termination for Convenience of the Government**

1. The performance of work under the Contract may be terminated by the District in accordance with this Article in whole, or in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the District. Any such termination shall be effected by delivery to the Architect-Engineer 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.
2. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Architect-Engineer shall:
  - a) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.

- b) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated.
- c) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
- d) Assign to the District, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Architect-Engineer under the orders and subcontracts so terminated, in which case the District 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.
- e) Settle all outstanding liabilities and all claims arising out of such termination of orders or subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this Article.
- f) Transfer title to the District and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
  - (i) fabricated or unfabricated parts, work in progress, completed work, supplies, and other material procured as a part of, or acquired in connection with, the performance of the work terminated by the Notice of Termination, and
  - (ii) 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 District.
- g) Use his best efforts to sell, in the manner, at the terms, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in 6 above provided, however, that the Architect-Engineer:
  - (I) shall not be required to extend credit to any purchaser, and
  - (ii) may acquire any property under the conditions prescribed and at a price or prices approved by the contracting officer, and
  - (iii) provided further, that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the district to the architect-engineer under the contract or shall otherwise be credited to the price or cost of the work covered by the contract or paid in such other manner as the contracting officer may direct.
- h) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.
- i) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Architect-Engineer and in which the District has or may acquire an interest.

- j) The Architect-Engineer shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the cost, or any item of reimbursable cost, under this Article.
  - k) "Plant clearance period" means, for each particular property classification (such as raw materials, purchased parts and work in progress) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the Contracting Officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the Contracting Officer and the Architect-Engineer. Final phase of a plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.
  - l) At any time after expiration of the plant clearance period, as defined above, the Architect-Engineer may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the District to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the District will accept title to such items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list, and any necessary adjustments to correct the list as submitted, shall be made prior to final settlement.
3. After receipt of a Notice of Termination, the Architect-Engineer shall submit to the Contracting Officer his termination claim, in the form with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 90 days from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Architect-Engineer made in writing within such 90 day period or authorized extension thereof. In the event the Architect-Engineer was terminated for default and it asserts that it is entitled to a termination for convenience, its certified request for the conversion of the default termination to one for convenience and its certified termination settlement proposal must be submitted to the Contracting Officer prior to the expiration of 90 days from the date of the default termination. With respect to a termination for convenience, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 90 day period or extension thereof. Nothing herein shall be construed to extend the time for the submission of a claim hereunder for a defaulted Architect-Engineer beyond 90 days from the date of the default termination. Upon failure of the Architect-Engineer to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due to the Architect-Engineer by reason of the termination and shall thereupon pay to the Architect-Engineer the amount so determined.
4. Subject to the provisions of Section 3 above, and subject to any review required by the District's procedures in effect as of the date of execution of the Contract, the Architect-Engineer and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Architect-Engineer by reason of the total or partial termination of



work pursuant to this Article, 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. The Contract shall be amended accordingly, and the Architect-Engineer shall be paid the agreed amount. Nothing in Section 5 below prescribing the amount to be paid to the Architect-Engineer in the event of failure of the Architect-Engineer and the Contracting Officer to agree upon the whole amount to be paid to the Architect-Engineer by reason of the termination of work pursuant to this Article, shall be deemed to limit, restrict or otherwise determine or effect the amount or amounts which may be agreed upon to be paid to the Architect-Engineer pursuant to this paragraph.

5. In the event of the failure of the Architect-Engineer and the Contracting Officer to agree as provided in Section 4 above upon the whole amount to be paid to the Architect-Engineer by reason of the termination of work pursuant to this Article, the Contracting Officer shall, subject to any review required by the District's procedures in effect as of the date of execution of the Contract, determine, on the basis of information available to him, the amount, if any, due the Architect-Engineer by reason of the termination and shall pay to the Architect-Engineer the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with Section 4 above:
  - a) 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 Section 2(e) 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 the Contract, which amounts shall be included in the cost on account of which payment is made under on Section 5(a)(i) above; and
    - iii) A sum, as profit on Section 5(a)(i) above, determined by the Contracting Officer to be fair and reasonable; provided however, that if it appears that the Architect-Engineer would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subparagraph and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and provided further that profit shall be allowed only on preparations made and work done by the Architect-Engineer for the terminated portion of the Contract but may not be allowed on the Architect-Engineer's settlement expenses. Anticipatory profits and consequential damages shall not be allowed. Any reasonable method may be used to arrive at a fair profit, separately or as part of the whole settlement.
  - b) The reasonable cost of the preservation and protection of property incurred pursuant to Section 2(i); and any other reasonable cost incidental to termination of work under the Contract including expense incidental to the determination of amount due to the Architect-Engineer as the result of the termination of work under the Contract.
6. The total sum to be paid to me Architect-Engineer under Section 5(a) 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. Except for normal spoilage, and except to the extent that the District shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Architect-Engineer under Section 5(a) above, the

fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the District, or to a buyer pursuant to Section 2(g) above.

7. The Architect-Engineer shall have the right of appeal, under Article 9 herein, from any determination made by the Contracting Officer under Sections 3 or 5. above, except that, if the Architect-Engineer has failed to submit his claim within the time provided in Section 3 above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under Sections 3 or 5. above, the District shall pay to the Architect-Engineer the following:
  - a) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or
  - b) If an appeal had been taken, the amount finally determined on such appeal.
8. In arriving at the amount due the Architect-Engineer under this Article there shall be deducted:
  - a) all unliquidated advance or other payments on account theretofore made to the Architect-Engineer, applicable to the terminated portion of the Contract;
  - b) any claim which the District may have against the Architect-Engineer in connection with the Contract; and
  - c) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Architect-Engineer or sold, pursuant to the provisions of this Article and not otherwise recovered by or credited to the District.
9. If the termination hereunder be partial, prior to the settlement of the terminated portion of the Contract, the Architect-Engineer may file with the Contracting Officer 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 at such price or prices; however, nothing contained herein shall limit the right of the District and the Architect-Engineer to agree upon the amount or amounts to be paid to the Architect-Engineer for the completion of the continued portion of the Contract when said Contract does not contain an established Contract price for such continued portion.
10. The District may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Architect-Engineer in connection with the terminated portion of the Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Architect-Engineer will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article, such excess shall be payable by the Architect-Engineer to the District upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess is received by the Architect-Engineer to the date on which such excess is repaid to the District; provided however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Architect-Engineer's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.
11. Unless otherwise provided in the Contract or by applicable statute, the Architect-Engineer, from the effective date of termination and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of

the Architect-Engineer, but without direct charge to the District, all his books, records, documents and other evidence bearing on the costs and expenses of the Architect-Engineer under the Contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs and other authentic reproductions thereof.

12. By virtue of a Termination for Convenience, the Architect-Engineer shall not become entitled to payment for defective work, deficient work, rejected work or work not in accordance with the plans or specifications set forth in the Contract.

## **ARTICLE 9. DISPUTES**

**A. Generally.** All disputes arising under or relating to this contract shall be resolved as provided herein.

**B. Claims by the Architect-Engineer against the District.**

1. Claim, as used in this Section B. of Article 9, means a written assertion by the Architect-Engineer seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.
  - a) All claims by the Architect-Engineer against the District arising under or relating to a contract shall be in writing and shall be submitted to the Contracting Officer for a decision.
  - b) Within 120 days after receipt of a claim, the Contracting Officer shall issue a decision, whenever possible taking into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Architect-Engineer.
  - c) Any failure by the Contracting Officer to issue a decision on a contract claim within the required time period shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided.
    - i) If the Architect-Engineer is unable to support any part of his or her claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Architect-Engineer, the Architect-Engineer shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Architect-Engineer's claim.
    - ii) Liability under this section shall be determined within 6 years of the commission of the misrepresentation of fact or fraud.
  - d) All cost data, pricing data, and task data of claims hereunder must be certified as accurate, complete, required, and necessary to the best of the Architect-Engineer's knowledge and belief. Further, all task or work data in the claim must be described therein to the smallest unit of work or task. The Contracting Officer may require any additional certifications, descriptions or explanations of the claim.

- e) The parties agree that time is of the essence and all claims hereunder must be presented to the Contracting Officer for a final decision within thirty (30) days of the occurrence of the circumstances giving rise to such claim or within thirty (30) days of when the Architect-Engineer knew or should have known of the circumstances giving rise to such claim, otherwise compensation for that claim is waived.
  - f) The parties agree that there shall be no claims for unabsorbed home office overhead.
2. The Architect-Engineer's claim shall contain at least the following:
- a) A description of the claim and the amount in dispute;
  - b) Any data or other information in support of the claim;
  - c) A brief description of the Architect-Engineer's efforts to resolve the dispute prior to filing the claim; and
  - d) The Architect-Engineer's request for relief or other action by the Contracting Officer.
  - e) The certification of the accuracy, completeness, requirement, and necessity of all aspects of the claim.
3. The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Architect-Engineer.
4. Pending final decision of an appeal, action, or final settlement, the Architect-Engineer shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.

**C. Claims by the District Against the Architect-Engineer.**

1. Claim as used in this Section C of Article 9, means a written demand or written assertion by the District, including the Contracting Officer, seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. Nothing herein shall be construed to require the District to notify the Architect-Engineer prior to the issuance of the Contracting Officer's final decision.
- 2.
- a) All claims by the District against the Architect-Engineer arising under or relating to a contract shall be decided by the Contracting Officer, who shall issue a decision in writing and furnish a copy of the decision to the Architect-Engineer.
  - b) The decision shall be supported by reasons and shall inform the Architect-Engineer of his or her rights. Specific findings of fact shall not be required.

3. This clause shall not authorize the Contracting Officer to settle, compromise, pay, or otherwise adjust any claim involving fraud.
4. The decision of the Contracting Officer shall be final and not subject to review unless an administrative appeal or action for judicial review is timely commenced by the Architect-Engineer.
5. Pending final decision of an appeal, action, or final settlement, the Architect-Engineer shall proceed diligently with performance of the contract in accordance with the decision of the Contracting Officer.
6. The Contracting Officer may enter into a voluntary exclusion agreement with the Architect-Engineer in order to settle any claim or dispute between the parties.

#### **ARTICLE 10. RETENTION AND EXAMINATION OF RECORDS**

Unless otherwise provided in the Contract, or by applicable statute, the Architect-Engineer, from the effective date of Contract completion and for a period of three years after final settlement under the Contract, shall preserve and make available to the District at all reasonable times at the office of the Architect-Engineer but without direct charge to the District, all his books, records, documents, and other evidence bearing on the costs and expenses of the Architect-Engineer under the Contract.

#### **ARTICLE 11. COVENANT AGAINST CONTINGENT FEES**

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

#### **ARTICLE 12. OFFICIALS NOT TO BENEFIT**

- A. District Employees Not To Benefit.** Unless a determination is made as provided herein, no officer or employee of the District will be admitted to any share or part of this contract or to any benefit that may arise therefrom, and any contract made by the Contracting Officer or any District employee authorized to execute contracts in which they or an employee of the District will be personally interested shall be void, and no payment shall be made thereon by the District or any officer thereof, but this provision shall not be construed to extend to the Contract if made with a corporation for its general benefit. A District employee shall not be a party to a contract with the District and will not knowingly cause or allow a business concern or other organization owned or substantially owned or controlled by the employee to be a party to such a contract, unless a written determination has been made by the head of the procuring agency that there is a compelling reason for contracting with the employee, such as when the District's needs cannot reasonably otherwise be met in accordance with DC Procurement Practices Act of 1985, D.C. Law 6-85, D.C. Official Code, section 2-310.01, and Chapter 18 of the DC Personnel Regulations. The Architect-Engineer represents and covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or

degree with the performance of its services hereunder. The Architect-Engineer further covenants not to employ any person having such known interests in the performance of the Contract.

**B. Anti-Competitive Practices and Anti-Kickback Provisions.**

1. The Architect-Engineer recognizes the need for markets to operate competitively and shall observe and shall comply with all applicable law, rules, and regulations prohibiting anti-competitive practices. The Architect-Engineer shall not engage, directly or indirectly, in collusion or other anti-competitive practices that reduces or eliminates competition or restrains trade. The District shall report to the appropriate authority any activity that evidences a violation of the antitrust laws, and take such other further action to which it is entitled or obligated under the law.
2. The Architect-Engineer shall observe and comply with all applicable law, rules, and regulations prohibiting kickbacks and, without limiting the foregoing, Architect-Engineer shall not (i) provide or attempt to provide or offer to provide any kickback; (ii) solicit, accept, or attempt to accept any kickback; or (iii) include, directly or indirectly, the amount of any kickback in the contract price charged by Architect-Engineer or a Subcontractor of the Architect-Engineer to the District. The Architect-Engineer shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in this subparagraph in its own operations and direct business relationships. The District may take any recourse available to it under the law for violations of this anti-kickback provision.

**ARTICLE 13. CONFLICT OF INTEREST AND ETHICS**

**A. Former Employees Generally.** Pursuant to Public Law 95-521, as amended, no former employee of the United States District or the District of Columbia:

1. Shall knowingly represent the Architect-Engineer before any District agency through personal appearance or communication in connection with a matter involving specific parties to this Contract where the former District employee participated personally and substantially in this matter while employed with the District.
2. Shall within two (2) years after terminating District employment knowingly represent the Architect-Engineer before any District agency through personal appearance or communication in connection with a matter involving specific parties to this Contract where the matter was pending under the official responsibility of the former employee within one (1) year prior to termination of District service.

**B. Former Senior Employees.** Pursuant to Public Law 95-591, as amended, no former senior level officer or former senior level employee of the United States District or the District of Columbia District named in or designated by the Contracting Officer of the Office of District Ethics under Section 207(d) of Title 18 USC:

1. Shall, within two (2) years after terminating District employment knowingly represent or aid counsel, advise, consult or assist in representing any other person by personal presence at any formal or informal appearance before any District agency in connection with a matter involving specific parties where the former employee participated personally aid substantially in that matter while employed with the District.

2. Shall, within one (1) year after terminating District employment knowingly act as an agent or attorney for or otherwise represent anyone in any formal or informal appearance before or with the intent to influence make any written or oral communication on behalf of anyone to (1) his or her former District or agency or any of its officers or employees or (2) in connection with any particular District matter, whether or not involving a specific party which is pending before such District or agency or in which it has a direct and substantial interest.
- C. Conflict of Interest.** The Architect-Engineer represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Architect-Engineer represents and warrants that in the performance of the Contract no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the District or District, nor any person whose salary is payable, in whole or in part, from the District Treasury, shall participate in any decision relating to the Contract which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Contract or in the proceeds thereof.
- D. No Kick-Backs.** The Architect-Engineer shall not offer or receive any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with this project. The Architect-Engineer shall not confer on any public employee having official responsibility for this project any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value.
- E. No Contractor Employment.** No official or employee of the District of Columbia whose duties as such official or employee include matters relating to or affecting the subject matter of the Contract shall, during the pendency and term of this Contract and/while serving as an official or employee of the District of Columbia, become or be an employee of the Architect-Engineer or any entity that is a subcontractor on this Contract.

#### **ARTICLE 14. DISMISSALS & REPLACEMENT OF KEY PERSONNEL**

- A. Dismissals by the District.** Should the continued employment of any person or persons in the Architect-Engineer's organization under this Contract be deemed by the Contracting Officer to be prejudicial to the interests of the District, such person or persons shall be immediately removed from the work hereunder. The Architect-Engineer shall make every effort in the selection of his employees and in the prosecution of the work under this Contract to safeguard all drawings and specifications and to prevent the theft conversion or unauthorized use of the same.
- B. Replacement of Key Personnel.** No substitutions for Key Personnel shall be permitted unless approved by the Contracting Officer. Any proposed replacement for Key Personnel must possess qualifications substantially similar to those of the Key Personnel being replaced and are subject to the prior written approval of the Contracting Officer. In addition, at the Contracting Officer's request at any time, the Architect-Engineer shall remove any Key Personnel or other personnel and substitute another employee of the Architect-Engineer or its subcontractors reasonably satisfactory to the Contracting Officer. The Contracting Officer may request such substitution at any time, in his sole discretion.

- C. Liquidated Damages.** In order to maintain project continuity the District expects that the Architect-Engineer will assign the same project managers to all phases of the Project and that such personnel will be available to oversee and coordinate the Work throughout the Project. Accordingly, the Architect-Engineer's designated Key Personnel shall be subject to liquidated damages for their removal or reassignment by the Architect-Engineer. In each instance where the Architect-Engineer removes or reassigns one of its Key Personnel (but excluding instances where such personnel become unavailable due to death, disability or separation from the employment of the Architect-Engineer or any affiliate of the Architect-Engineer) without the prior written consent of the Contracting Officer, the Architect-Engineer shall pay to the District an amount set forth in the Contract as liquidated damages and not a penalty, to reimburse the District for its administrative costs arising from the Architect-Engineer's failure to provide the Key Personnel. The foregoing liquidated damage amount shall not bar recovery of any other damages, costs or expenses other than the District's internal administrative costs. In addition, the District shall have the right, to be exercised in its sole discretion, to remove, replace or to reduce the scope of services of the Architect-Engineer in the event that a member of the Key Personnel has been removed or replaced by the Architect-Engineer without the consent of the District. In the event the District exercises the right to remove, replace or to reduce the scope of services of the Architect-Engineer, the District shall have the right to enforce the terms of this Contract and to keep-in-place those members of the Architect-Engineer's team not removed or replaced and the remaining members shall complete the services required under this Contract in conjunction with the new members of the Architect-Engineer's team approved by the District.

#### **ARTICLE 15. COMPLIANCE WITH FEDERAL AND DISTRICT OF COLUMBIA LAWS AND REGULATIONS**

- A. Generally.** The Architect-Engineer shall at all times observe and comply with all laws, codes, regulations, orders and decree set forth by any department, agency or branch of the United States District, and the District of Columbia and shall indemnify and save harmless the District of Columbia and all of its officers, agents, employees and servants against any and all claims or liability arising from or based on the violation of any such law, code, regulation, order or decree whether by the Architect-Engineer an employee or agent of the Architect-Engineer any person firm or corporation employee or engaged by the Architect-engineer or contractually associated with him in the performance of or in connection with the work required contemplated or performed under the Contract.
- B. Equal Opportunity: Non-Discrimination in Employment.** During the performance of this contract the Architect-Engineer shall comply with the provisions of Mayor's Order 85-85 as implemented by Title 4, Chapter 11 – Equal Employment Opportunity Requirements in Contracts, 33 DCR 4952 (August 15, 1986).
- C. Buy American Act.**
- 1. Agreement**—In accordance with the Buy American Act (41 USC 10a-10d), and Executive Order 10582. December 17, 1954 (3 CFR, 1954-58 Comp., p. 230), as amended by Executive Order 11051, September 27, 1962 (3 CFR, 1059—63 Comp., p. 635), the Architect-Engineer agrees that only domestic construction material will be used by the Architect-Engineer, subcontractors, material men and suppliers in the performance of the Contract, except for non-domestic material listed in the Contract.



2. *Domestic Construction Material*—“Construction material” means any article, material or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a “domestic construction material” if it has been mined or produced in the United States. A manufactured construction material is a “domestic construction material” if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. “Component” means any article, material, or supply directly incorporated in a construction material. -
3. *Domestic Component*—A component shall be considered to have been “mined, produced, or manufactured in the United States” regardless of its source, in fact, if the article, material or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the District to be not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.
4. *Foreign Material* – When steel materials are used in a project a minimal use of foreign steel is permitted. The cost of such materials cannot exceed on-tenth of one percent of the total project cost, or \$2,500,000, whichever is greater.

**D. Davis-Bacon Act Provision.** The Architect-Engineer agrees that the work performed under this Contract shall be subject to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7). The wage rates applicable to this Project shall be attached as an exhibit to the Contract. The Architect-Engineer further agrees that it and all of its subcontractors shall comply with the regulations implementing the Davis-Bacon Act and such regulations are hereby incorporated by reference.

**E. False Claims Act.** The Architect-Engineer shall be governed by all laws and regulations prohibiting false or fraudulent statements and claims made to the government, including the prescriptions set forth in District of Columbia Code §22-2405 and §§2-381.01 et seq.

## **ARTICLE 16. APPOINTMENT OF ATTORNEY**

The Architect-Engineer does hereby irrevocably designate and appoint the Clerk of the Superior Court of the District and his successors in office as the true and lawful attorney of the Architect-Engineer for the purpose of receiving service of all notices and processes issued by any court in the District, as well as service of all pleadings and other papers, in relation to any action or legal proceeding arising out of or pertaining to the Contract or the work required or performed hereunder.

The Architect-Engineer expressly agrees that the validity of any service upon the said Clerk as herein authorized shall not be affected either by the fact that the Architect-Engineer was personally within the District of Columbia and otherwise subject to personal service at the time of such service upon the said Clerk or by the fact that the Architect-Engineer failed to receive a copy of such process, notice, pleading or other paper so served upon the said Clerk, provided that said Clerk shall have deposited in the United States mail, certified and postage prepaid, a copy of such process, notice, pleading or other papers addressed to the Architect-Engineer at the address stated in the Contract.

## **ARTICLE 17. INDEMNIFICATION**

- A. Violation of Laws, Regulations, Specifications, and Breach of Contract.** If the Architect-Engineer violates any laws, regulations, codes or industry standards relating to the Project, the Architect-Engineer shall take prompt action to correct or abate such violation and shall indemnify and hold the Department and its consultants, representatives, agents, servants and employees harmless against any damages, fines, penalties, third party claims, suits, awards, actions, causes of action or judgments, including but not limited to reasonable attorney's fees and costs incurred thereunder, that result from such violation. If the Architect-Engineer breaches the terms of this Agreement, including the solicitation, letter contract, standard contract provisions, directives, specifications, manufacturer's specifications, and the RFP, the Architect-Engineer shall indemnify and hold the Department and its consultants, representatives, agents, servants and employees harmless against any damages, fines, penalties, third party claims, suits, awards, actions, causes of action or judgments, including but not limited to reasonable attorney's fees and costs incurred thereunder, that result from such breach.
- B. Professional Services.** To the fullest extent permitted by law, the Architect-Engineer shall defend, indemnify and hold harmless the Department and the Department's consultants and agents and employees from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Architect-Engineer, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.
- C. Non-Professional Services.** In addition, other than claims arising out of the performance of professional services, the Architect-Engineer shall indemnify and hold harmless the Department, its representatives, consultants, officers, agents, servants and employees from and against third-party claims, liabilities, demands, losses, damages, judgments, costs, or expenses, including reasonable attorneys' fees and expenses recoverable under applicable law, to the extent such claims are caused by acts or omissions of the Architect-Engineer, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified under this Agreement or arising out of the Contract Work, provided that, such claims arise out of non-professional services required under the Contract.
- D. Third Party Disputes.** Disputes between the Architect-Engineer and any subcontractors, material suppliers, or any other third parties over payments allegedly owed by the Architect-Engineer to a third party shall be resolved exclusively between the Architect-Engineer and the third party; the Architect-Engineer shall permit no pass-through suits to be brought against the District by a third party in the Architect-Engineer's name. However, nothing herein shall be construed to prevent the Architect-Engineer from paying a subcontractor's claim and seeking a timely equitable adjustment hereunder.

## **ARTICLE 18. SUBCONTRACTORS AND/OR OUTSIDE ASSOCIATED AND CONSULTANTS**

- A. Prior Consent Required.** The Architect-Engineer shall not delegate or enter into any Subcontracts for the performance of its obligations under the Contract, in whole or in part, without on each occasion obtaining the prior written consent of the Contracting Officer. Any

subcontractors and/or outside associates or consultants required by the Architect-Engineer in connection with the services covered by the Contract shall be limited to such individuals or firms as were specifically identified in the Architect-Engineer's written proposal and approved by the District during negotiations. Any proposed changes in such subcontractors, associates, or consultants shall be subject to the prior written approval of the Contracting Officer.

**B. Requests.** The Architect-Engineer shall submit to the Contracting Officer copies of all proposed Subcontract(s) to be entered into by the Architect-Engineer, along with the Architect-Engineer's written request for the District's consent. All such Subcontracts must specify that:

1. work performed by the Subcontractor shall be in accordance with the terms of the Contract;
2. nothing contained in such Subcontract shall be construed to impair the rights of the District under the Contract;
3. the District's consent to or approval of any Subcontract shall not create any obligation of the District to any Subcontractor;
4. nothing contained in such Subcontract, or under the Contract, shall create any obligation of the District to any Subcontractor;
5. the District shall be expressly designated a third party beneficiary of the Subcontract;
6. upon request by the District (at the District's sole option) and upon receipt of written notice from the District stating that the Contract between the District and the Architect-Engineer has been terminated, the Subcontractor agrees that it will continue to perform its obligations under the Subcontract for the benefit of the District in accordance with the terms and conditions of the Contract, provided the District pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of the Contract between the District and the Architect-Engineer at the same rate or in the same amount as set forth in the Subcontract for Services and Materials after such date of termination;
7. the Subcontractor shall be bound by the same requirements as the Architect-Engineer including, without limitation, furnishing payment and performance bonds, confidentiality, maintenance and preservation of records, and audit by government representatives, under the Contract;
8. the Subcontractor agrees (i) to assign and transfer to the District all of its rights to sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or the Contract, (ii) that, other than as directed by the District, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (iii) that the District, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by the assignment;

**C. No Relief of Obligations.** No permitted Subcontract shall relieve the Architect-Engineer of any obligation under the Contract. The Architect-Engineer shall be as fully responsible for the acts and omissions of its Subcontractors or persons either directly or indirectly employed by them, as

it is for the acts and omissions of the Architect-Engineer or persons directly or indirectly employed by the Architect-Engineer.

- D. No Effect.** Any purported Subcontract in violation of this Section or of any other Section in the Contract shall be of no force and effect.
- E. Right to Reject.** The District may, in its sole discretion, reject any or all bids and proposals received by the Architect-Engineer from any Subcontractor for any portion of the Work, and may require the Architect-Engineer to obtain new or revised bids or proposals or Subcontractors.
- F. Incorporation by Reference.** Any agreement the Architect-Engineer makes with a subcontractor, outside associate or consultant shall incorporate specifically or by reference thereto, each and every provision of this Contract, these Standard Contract Provisions, the Attachment(s) and Appendices hereto, and if applicable, the District's Standard Contract Provisions for Construction Contracts.

#### **ARTICLE 19. WAIVER**

No waiver by the District of any breach of any provision of the Contract shall operate as a waiver of such provision or of the Contract or as a waiver of subsequent or other breaches of the same or any other provision of the Contract; nor shall any action or non-action by the Contracting Officer or by the District be construed as a waiver of any provision of the Contract or of any breach thereof unless the same has been expressly declared or recognized as a waiver by the Contracting Officer or the District in writing.

#### **ARTICLE 20. PATENTED AND PROPRIETARY ITEMS**

- A. Prior Approval Required.** The Architect-Engineer shall not, without the prior written approval of the Contracting Officer, specify for the Project, or necessarily imply the required use of any article, product, material, fixture or form of construction, the use of which is covered by a patent, or which is otherwise exclusively controlled by a particular firm or group of firms.
- B. Indemnity.** The Architect-Engineer shall be liable to and hereby agrees to defend, indemnify and hold harmless the District against any claim, action cost or judgment against the District for patent infringement, trademark violation, copyright violation or infringement of rights in technical data, in any systems, graphs, charts, designs, drawings or specifications furnished by the Architect-Engineer in the performance of this Contract.

#### **ARTICLE 21. TRANSFER OR ASSIGNMENT OF CONTRACT**

- A. Prior Consent Required.** Unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Architect-Engineer to any other party without the written consent of the Contracting Officer, and in the case where a performance and payment bond is required to securing the Contract, nor without the written acceptance by the surety on the performance and payment bond securing the Contract of the assignee as the Architect-Engineer and the principal on such bond; and any attempted transfer or assignment not authorized by this Article shall constitute a breach of the Contract and the District may for such cause terminate the Contract for default and terminate the right of the Architect-Engineer to proceed in the same manner as provided in Article 8.B. herein, and the Architect-Engineer and his sureties shall be liable to the District for any excess cost occasioned the District thereby.

- B. Monies.** The Architect-Engineer shall not assign any right to any monies to be paid under the Contract, without on each occasion obtaining the prior written consent of the Contracting Officer. In no case shall approval by the District of the assignment of any monies to be paid under the Contract relieve the Architect-Engineer from its obligations hereunder or change the remaining terms of the Contract. Any purported assignment in violation of this Article shall be of no effect.
- C. Applicability in Case of Bankruptcy or Insolvency.** A receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings shall comply with the requirements set forth in the Standard Contract Provisions.
- D. Obligation of Architect-Engineer.** The Architect-Engineer acknowledges that the Services are the obligation of the Architect-Engineer and the District shall have no obligation to accept performance by a third party without the Contracting Officer's prior and express written consent.
- E. Failure to Obtain Consent.** Failure to obtain the previous written consent of the Contracting Officer to such an assignment, transfer or conveyance, shall justify, at the option of the Contracting Officer, the revocation and annulment of this Contract. The District shall thereupon be relieved and discharged from any further liability and obligation to the Architect-Engineer, his assignees or transfers, and the Architect-Engineer and his assignees shall forfeit and lose all monies theretofore earned under the Contract, except so much as may be required to pay the Architect-Engineer's employees.
- F. Assignment by the District.** This Contract may be assigned by the District to any corporation, agency or instrumentality having authority to accept such assignment.

## ARTICLE 22. QUALIFICATIONS

- A. Signatory Authority and Qualifications.** The Architect-Engineer hereby warrants that the signature or signatures herein before affixed are duly authorized further the Architect-Engineer warrants as a true statement any and all statements of qualification with respect to but not limited to professional status premises, employees experience and financial standing such as may be set forth in documents furnished by the Architect-Engineer or required by the District for the purpose of securing the District's consent to enter into this Contract. Misrepresentation shall be cause for termination for default of the Contract and such other action as may be appropriate including with limitation suspension and debarment and civil or criminal penalties.
- B. Good Standing.** If the Architect-Engineer is an entity, the Architect-Engineer is either: (1) a not-for-profit corporation or other entity determined to be tax exempt pursuant to section 501(c) of the Internal Revenue Code by the Internal Revenue Service; or (2) a business corporation, partnership or other business entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization. The Architect-Engineer shall also be duly licensed, qualified and in good standing in the District of Columbia and in all jurisdictions in which it conducts business activities. The Architect-Engineer's loss of good standing is grounds for Termination for Default without liability upon the Department.
- C. Authority to Act.** the Architect-Engineer has full legal power and authority to enter and perform the Contract and provide the Services and Materials without resulting in a default under or a breach or violation of (1) the Architect-Engineer's certificate or articles of incorporation or bylaws or other organizational documents, if applicable; (2) any Applicable Law, or any license, permit

or other instrument or obligation to which the Architect-Engineer is now a party or by which the Architect-Engineer may be bound or affected; and (3) the Architect-Engineer's tax exempt status, if applicable.

- D. Legal Obligation.** The Contract has been duly authorized, executed and delivered by the Architect-Engineer, by and through persons authorized to execute the Contract on behalf of the Architect-Engineer, and constitutes the legal, valid and binding obligation of the Architect-Engineer, enforceable against the Architect-Engineer in accordance with its terms.
- E. No Litigation Preventing Performance.** There is no litigation, claim, consent order, settlement agreement, investigation, challenge or other proceeding pending or threatened against the Architect-Engineer, its properties or business, or any individuals acting on the Architect-Engineer's behalf, including, without limitation, Subcontractors, which seek to enjoin or prohibit the Architect-Engineer from entering into or performing its obligations under the Contract.
- F. Requisite Licensure and Qualifications.** The Architect-Engineer and all of the entities and individuals acting on the Architect-Engineer's behalf, including, without limitation, Subcontractors, in connection with the Services and Materials under the Contract, possess and, at all times during the term of the Contract, shall possess all licenses, certifications, qualifications, or other credentials as required in accordance with all applicable laws, regulations and the terms of the Contract, to perform the Services and provide the Materials. The Architect-Engineer shall provide the District with copies of all licenses, credentials, and/or certifications specified in this Section within five (5) days of request by the District.

#### **ARTICLE 23. ARCHITECT-ENGINEER'S WARRANTY AGAINST DEBARMENT**

The Architect-Engineer certifies that it is not currently debarred, suspended, excluded, party to a voluntary exclusion agreement or otherwise enjoined from submitting bids or proposals on contracts for the type of goods and/or services covered by the Contract, nor is the Architect-Engineer an agent of any person or entity that is currently so debarred, suspended, excluded or otherwise enjoined.

#### **ARTICLE 24. RECOVERY OF DEBTS OWED THE GOVERNMENT**

The Architect-Engineer hereby agrees that the Department may use all or any portion of any payment, consideration or refund due the Architect-Engineer under the Contract to satisfy, in whole or part, any debt due the Department.

#### **ARTICLE 25. ADMINISTRATIVE LIQUIDATED DAMAGES**

In addition to any other liquidated damages provided for in the Contract, the Architect-Engineer hereby agrees that the Government may assess administrative liquidated damages for the Architect-Engineer's failure to submit when due any deliverable required by the Contract. Unless otherwise prescribed by the Contracting Officer, the rate of the administrative liquidated damages shall be \$250 per day until the required deliverable is received and accepted by the Department. The Department's remedies for failure to comply with the Contract terms and conditions are cumulative and not exclusive. Nothing herein shall be construed to limit the Department's ability to terminate the Architect-Engineer for the failure to submit Contract deliverables when due.

## **ARTICLE 26. FORCE MAJEURE**

If the Architect-Engineer, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Contract, the Architect-Engineer may be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Contract by reason of Force Majeure, within 72 hours of the occurrence or event, the Architect-Engineer must provide the Contracting Officer written notice of its inability to perform as well as a description of the Force Majeure and its effect on Contract performance. The Contracting Officer will have the right to cause the inspection of the work site to determine the validity of the Architect-Engineer's assertion of its inability to perform. If the Contracting Officer agrees that the Architect-Engineer is wholly or partly unable to perform its obligations under the Contract a decision will be issued indicating the extent to which the Architect-Engineer is excused from its performance obligations. In no event will the Contractor be entitled to money damages from the Department due to Force Majeure.