

SECTION 8

PROSECUTION AND PROGRESS

8.01 SUBLETTING OR ASSIGNING OF CONTRACT:

The Contractor shall not sublet, assign, transfer, convey, sell or otherwise dispose of any portion of the Contract, his right, title, or interest therein or his power to execute such Contract, to any person, firm, or corporation without written consent of the Owner, and such written consent shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the Contract. In case the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior liens of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract.

The Contractor may utilize the services of Specialty Subcontractors on those parts of the Work which, under normal contracting practices, are performed by the Specialty Subcontractors.

The Contractor shall not award any Work to any subcontractor without prior written approval of the Owner, which approval will not be given until the Contractor submits to the Owner a written statement concerning the proposed award to the subcontractor, which statement shall contain such information as the Owner may require.

The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, and of personnel either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the General Conditions and other Contract Documents insofar as applicable to the Work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

Nothing contained in this Contract shall create any contractual relation between any subcontractor and the Owner.

8.02 NOTICE TO PROCEED:

The Owner will, after executing the Contract, issue to the Contractor in writing or by wire a Notice to Proceed. The beginning of the time allotted for the Contract completion will be 10 days after the date of the Notice to Proceed, or the day on which Work is actually started, whichever occurs first.

8.03 NOTICE AND SERVICE THEREOF:

Any notice to any Contractor from the Owner relative to any part of this Contract shall be in writing to the said Contractor at his last given address, or delivered in person to said Contractor or his authorized representative on the Work.

8.04 PROSECUTION OF WORK:

The Contractor shall begin the Work to be performed under the Contract within 10 days after issuance of the Notice to Proceed, and he shall give the Engineer definite notice of his intention to start work at least 72 hours in advance of beginning work. During the progress of the Work, the Contractor shall notify the Engineer at least 24 hours before he expects to be ready to undertake any particular features of the Work in order that proper inspection may be provided.

The Contractor must continuously and diligently prosecute the Work in such order and manner to complete the Work in the specified time. The Contractor shall employ an ample force of men and provide construction plant properly adapted to the Work and of sufficient capacity and efficiency to accomplish the Work in a safe and workmanlike manner at the rate of progress deemed necessary to insure its completion within the time set forth in the Contract. Each operation shall be begun as soon after the Contract is awarded as conditions will permit. Each class of work will be expected to progress from the date it is begun until completed. All plant and equipment shall be maintained in good working order and provision shall be made for immediate emergency repairs.

Should the Contractor fail to maintain a satisfactory rate of progress, the Owner will require that additional men and/or plant be placed on the Work, or a reorganization of plant layout be effected in order that the Work be brought up to the required progress schedule and maintained there. Should the Contractor fail to furnish suitable or sufficient tools, machinery, equipment or force for the proper prosecution of the Work, the Owner may withhold all estimates which are or may become due until their orders are complied with or the Contract may be annulled as hereinafter provided.

Should the prosecution of the Work be discontinued by the Contractor, with the consent of the Owner, the Contractor shall notify the Engineer in writing at least 24 hours before resuming operations.

8.05 CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES:

Immediately after execution and delivery of the Contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in the form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor shall also furnish the Owner: (a) a detailed estimate giving a complete breakdown of lump sum prices; (b) periodic itemized estimates of work done for the purpose of making partial payments thereon; and (c) a schedule of Shop Drawings submissions. The cost incurred in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the Contract Price.

8.06 LIMITATIONS OF OPERATIONS:

The Contractor shall at all times conduct the Work in such manner and in such sequence as will insure the least practicable interference with traffic. He shall not open up work to the prejudice of work already started. The Contractor shall finish the section on which work is in progress before work is started on any additional section.

Whenever work being done by other Contractors is contiguous or related to the Work included in the Contract, the respective rights of the various interests involved shall be established by the Engineer in order

to secure the completion of the various portions of the Work in general harmony.

8.07 CHARACTER OF WORKMEN AND EQUIPMENT:

All subcontractors, superintendents, foremen, and workmen employed by the Contractor shall be competent and reliable. All workmen must have sufficient skill and experience to properly perform the Work assigned them. All workmen engaged on special work or skilled work, or in any trade shall have had sufficient experience and ability in such work to properly and satisfactorily perform it and operate the equipment involved, and shall make due and proper effort to execute the Work in the manner prescribed in the Contract. The Owner may demand the dismissal of any person employed by the Contractor in, about, or upon the Work who misconducts himself or is incompetent or negligent in the due and proper performance of his duty, or who neglects or refuses to comply with the Contract; and such person shall not again be employed thereon without the written consent of the Owner. Should the contractor continue to employ or re-employ any such person, the Owner may withhold all estimates, which are or may become due or he may suspend the Work until the Contractor complies with such orders.

The methods and appliances used, the labor employed, and the machinery and equipment used shall be of sufficient size and in such mechanical condition as to meet the requirements and produce a satisfactory quality and quantity of work, shall be adequate to complete the Contract within the time specified in the Contract. No change in the machinery and equipment employed on the Work, which shall have the effect of decreasing its capacity, shall be made. The measure of the capacity of machinery and equipment shall be its actual performance on the Work.

In case the actual progress shall fall behind the estimated progress at any time, or should it become apparent that the Contractor will be unable to complete the Contract at the time and in the manner specified in the Contract, the Owner may require that additional equipment be placed on the Work.

Should the Contractor fail to furnish suitable or sufficient tools, machinery, equipment or force for the proper prosecution of the Work, the Owner may withhold all estimates which are or may become due until their orders are complied with or the Contract may be annulled as hereinafter provided.

Equipment used on any portion of the Work shall also be such that no injury to the roadway, adjacent property, utilities, structures or other highways will result from its use.

8.08 TEMPORARY SUSPENSION OF WORK:

The Owner shall have the authority to suspend the Work wholly or in part for such period as may be deemed necessary, due to unsuitable weather, or other essential conditions which are unfavorable for the suitable prosecution of the Work, or for failure on the part of the Contractor to carry out instructions, or to perform any provision of the Contract or on account of any other conditions, which make it impracticable to secure satisfactory work. No additional compensation shall be paid the Contractor because of such suspension. The Contractor shall immediately respect the written order of the Owner or his authorized representative to suspend the Work, wholly or in part. Upon suspension, the Work shall be put in proper and satisfactory condition, carefully covered and properly protected. The Contractor shall not suspend the work without such authority and the Work shall be resumed when conditions are favorable and methods are corrected when instructed in writing, and the Contractor shall notify the Engineer when he proposes to resume work, sufficiently in advance of such time, so as to afford the Engineer opportunity to re-establish field representation.

Should the progress of the Work be stopped by a temporary injunction, court or restraining order, process or judgment of any kind directed to either of the parties hereto, then such period of delay shall not be charged against the Contract Time nor shall the Owner be liable to the Contractor because of such delay or termination of work.

If for any reason it should become necessary to stop work for an indefinite period, the Contractor shall store all materials in such a manner that they will not obstruct or impede the traveling public or become damaged in any way, and he shall provide suitable drainage and take every precaution to prevent damage to or deterioration of the Work performed.

8.09 DETERMINATION AND EXTENSION OF CONTRACT TIME FOR COMPLETION OF WORK:

A. When the time for completion of the Work in the Contract is based upon working days, the number of working days will be specified in the Proposal Form.

A working day is defined as any day when, in the opinion of the Engineer, soil and weather conditions are such as would permit effective work on any of the current major or controlling operations of the Project with at least 80 percent of the labor and equipment normally engaged on such major or controlling operations for at least 5 hours or more. If conditions are such as to stop work in less than this time, the day shall not be counted as a working day. Sundays, national holidays, and holidays legal in the State shall be excluded from the count of working days. Contract working days shall start on the date stipulated in the Notice to Proceed and the Engineer shall be the sole judge of working days that elapse between the date stipulated in the Notice to Proceed and the actual commencing of operations by the Contractor. In computing the time required by the Contractor in the execution of the Work, allowance will be made for days not considered working days. However, no allowance shall be made for delays or suspension of the Work due to fault of the Contractor. Each week the Engineer shall give written notice to the Contractor, or to his representative in charge of the Work, of the number of working days the Engineer has determined there were in the weekly period covered by such notices. Any objection by the Contractor to such weekly decision shall be deemed waived, shall not thereafter be made the basis for any claim, unless the Contractor shall within 3 days of receipt of such notice file with the Engineer written protest setting forth his objections and specifying the reason therefore.

In case the final estimate exceeds the Contract Bid Price an extension in the work days will be granted the Contractor. This extension shall be in direct proportion to the amount of total overrun in dollars, that is, the percentage of overrun shall first be computed and the Working Days shall be increased by the same percentage.

B. When time set for completion of the Work is based upon calendar days, working days are not applicable and no extension of time beyond the said calendar date will be made, except that where the final estimate exceeds the Contract Bid Price, an extension in calendar days will be granted the Contractor.

This extension shall be in direct proportion to amount of total overrun in dollars as above provided.

Time shall not be charged for maintenance after the Final Construction Inspection in case of either A or B.

8.10 FAILURE OR DELAY IN COMPLETING WORK ON TIME:

Time is an essential element in the Contract, as delay in the prosecution of the Work will inconvenience the public, obstruct traffic, and interfere with business. It is important that the Work be pressed vigorously to completion. Should the Contractor, or, in case of default, the Surety fail to complete the Work within the time stipulated in the Contract, or within such extra time as may be allowed as herein above provided, a deduction of the amount stipulated in the Contract for Liquidated Damages will be made for each and every calendar day that such Contract remains uncompleted after the calendar date specified for completion or after the expiration of the number of working days allowed for completion. The said amount stipulated in the Contract is hereby mutually agreed upon as liquidated damages.

Permitting the Contractor to continue and finish the Work or any part of it after the calendar date specified for completion or after the expiration of the number of Working Days allowed for completion, after any extension of time, shall not operate as a waiver on the part of the Owner of the rights of the Owner under this Contract.

In any suit for collection of, or involving the assessment of, liquidated damages, the reasonableness of the amount per day stipulated in the Contract shall be presumed. The liquidated damages referred to herein are intended to be and are cumulative, and shall be in addition to every other remedy now or hereafter enforceable at law, in equity, by statute, or under the Contract.

8.11 DEFAULT OF CONTRACT:

If the Contractor fails to begin the Work under Contract within the time specified, or fails to perform the Work with sufficient workmen, equipment, or materials to insure its prompt completion, or performs the Work unsuitably, or neglects or refuses to remove materials or perform anew such work as shall be rejected as defective and unsuitable, or discontinues the prosecution of the Work, or from any other cause whatsoever does not carry the Work

in an acceptable manner, or becomes insolvent or is adjudicated as bankrupt, or commits any act of bankruptcy or insolvency, or allows any final judgment to stand against him unsatisfied for a period of 10 days, the Owner or his representative may give notice in writing by registered mail to the Contractor and the Surety of such delay, neglect, or default. If within 10 days after such notice the Contractor does not proceed to remedy to the satisfaction of the Owner the fault specified in said notice, or the Surety does not proceed to take over the Work for completion, the Owner shall have full power and authority, without impairing the obligation of the Contract or the Contract Bonds, to take over the completion of the Work; to appropriate or use any or all material and equipment on the ground that may be suitable and acceptable; to enter into agreements with others for the completion of the Contract according to the terms and provisions thereof; or to use such other methods as in its opinion may be required for the completion of the Contract. The Contractor and his Surety shall be liable for all costs and expenses incurred by the Owner in completing the Work, and also for the liquidated damages in conformity with the terms of the Contract. In case the sum of such liquidated damages and the expense so incurred by the Owner is less than the sum which would have been payable under the Contract if it had been completed by the Contractor or his Surety, the Contractor or his Surety shall be entitled to receive the difference; and in case the sum of such expense and such liquidated damages exceeds the sum which would have been payable under the Contract, the Contractor and his Surety shall be liable and shall pay to the Owner the amount of such excess. Notice to the Contractor shall be deemed to be served when delivered to the person in charge of any office used by the Contractor, his representative at or near the Work or by registered mail addressed to the Contractor at his last known place of business.

8.12 TERMINATION FOR FAILURE OF PERFORMANCE:

In the event of failure by the Contractor to perform any and all of the Contractor's obligations in a prompt and efficient manner satisfactory to the Owner, the Owner will have the right to summarily terminate this agreement, including all work covered hereby, by giving the Contractor written notice of such termination, after which the Owner may employ contracting services of his choice to complete the Work under this Contract and the Contractor and its Sureties will reimburse the Owner any additional costs which may result from such termination and employment of other contracting services. Failure by

the Owner to exercise this right to so terminate this Contract for any such default by the Contractor shall not constitute a waiver by the Owner of its right to so terminate this Contract for any subsequent default.

8.13 PAYMENTS TO CONTRACTOR:

The Contractor shall submit a payment estimate on or before the 1st day of each calendar month for work performed the preceding calendar month. Within 10 days of receipt of the estimate, the Engineer will review, approve, and forward the estimate to the Owner, or return the estimate to the Contractor for needed corrections. Upon receipt of an estimate which has been reviewed and approved by the Engineer, the Board will consider the estimate at its next scheduled meeting, and within 10 calendar days after Board approval, will make a partial payment to the Contractor on the basis of an approved and certified estimate. To insure the proper performance of this Contract, the Owner will retain 10 percent of the amount of each estimate (unless a different amount is stipulated in the Special Provisions) until final completion and acceptance of all Work covered by this Contract. All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of Owner to require the fulfillment of all of the terms of the Contract

The Contractor agrees that he will indemnify and save the Owner harmless from all claims growing out of the lawful demands of subcontractors, laborers, workmen, mechanics, materialmen, and furnishes of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this Contract. The Contractor shall furnish satisfactory evidence that all obligations of the nature herein above designated have been paid, discharged, or waived. If the Contractor fails so to do, then the Owner may, after having served written notice on the said Contractor, either pay unpaid bills of which the Owner has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged, whereupon payment to the Contractor shall be resumed, in accordance with the terms of this Contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon

the Owner to either the Contractor or his Surety. In paying any unpaid bills of the Contractor, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the Contract by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payment made in good faith.

All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and Work upon which payments have been made or the restoration of any damaged Work, or as a waiver of the right of Owner to require the fulfillment of all the terms of the Contract.

8.14 PAYMENT FOR MATERIAL STORED:

Materials delivered to the Project site, but not incorporated in the completed work will be paid for (less retainage) in the month following delivery when substantiated by invoices from the manufacturer. This includes materials delivered to storage prior to issuance of notice to proceed. Invoices for materials delivered during the month shall be included with the estimate on which the materials are shown. On monthly estimates subsequent to the first estimate submitted that includes invoices for stored materials for which payment to the Contractor has been made, there shall be a signed statement that the invoices have been paid by the Contractor. The statement shall reads as follows:

“This is to certify that payment has been made for invoiced materials included in previous monthly estimates No. _____ through _____.

Signed _____”

In the event that such statement is not furnished or the manufacturer's or material suppliers notify the Owner in writing that they have not been paid for materials included on previous estimates, the Owner will make payment to the manufacturers or material suppliers in accordance with the provisions of these Specifications and the amount of such payments shall be deducted from the amount then due the Contractor. It is the intent that payment for materials delivered to the Project are to be paid for as promptly as possible and that the Contractor is to make remittance for such materials to the manufacturers or materials suppliers promptly upon receipt of funds

from the Owner. The Owner reserves the right to take such steps as deemed appropriate pursuant to the provisions of these Specifications to assure that materials are paid for promptly.

8.15 PAYMENT BY CONTRACTOR:

The Contractor shall pay: (a) for all transportation and utility services not later than the 20th day of the calendar month following that in which services are rendered; (b) for all materials, tools, and other expendable equipment to the extent of 90 percent of the cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the Project; (c) for major items of equipment to be installed in the Work, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the equipment furnished; and (d) to each of his subcontractors, not later than the 5th day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by his subcontractors to the extent of each subcontractor's interest therein.

8.16 FURNISHING OF UTILITIES:

The Contractor, at his own expense, shall provide water, sewer, gas, electricity and telephone lines for construction. The Contractor shall provide all necessary temporary piping and wiring as required to perform his Work. After completion of the permanent utility connections, the Contractor shall be required as a part of this Work to secure all utility services from the respective utility companies and shall pay all monthly bills until final acceptance. The Contractor shall then have the respective utility companies transfer their billing to the Owner's name. If the Owner obtains beneficial use prior to final acceptance, the billing may be transferred at that time. Utility services required for testing of equipment or other use of the Contractor will be paid for by the Contractor regardless of whether equipment has been placed in service. Unless specified elsewhere within these Specifications and/or noted on the Plans, costs associated with the providing of permanent utilities including water and electricity requiring work beyond the point of connection of the utility company shall be considered outside the scope of work defined for this Contract. Costs, charges, fees, etc., assessed by utility companies for work or services beyond the point of connection shall not be the responsibility of the Contractor unless specifically included by other portions of these Specifications and Plans. Utility

services required for testing of equipment will be paid for by the Contractor regardless of whether equipment has been placed in service.

8.17 MONTHLY ESTIMATES:

For the purpose of making partial monthly estimates only work that has been completed will be measured for payment. On each monthly estimate, the Contractor shall place the following certification:

"I hereby certify that the Work covered by this estimate was performed in accordance with the Contract, that prevailing scales of wages were paid and that this estimate is true and that payment therefore has not been received.

Number of Days in Contract _____ Days
Number of Days Elapsed _____ Days
Percent of Time Elapsed _____ %
Percent of Contract Completed _____ %

By _____"

8.18 EXTRA AND FORCE ACCOUNT WORK:

Extra Work as hereinbefore defined, when authorized and accepted, will be paid for in accordance with the following:

- A. The Contractor shall submit to the Owner or its authorized representative a written agreement for the Work to be done and basis of payment (lump sum, force account or unit price), and submit the same to the Owner for authorization to perform such Extra Work.
 - 1. When Extra Work is authorized to be paid for on a lump sum basis, the Contractor shall compute the percentage done each month and submit with the monthly estimate, a detail sheet showing this percentage and the amount due.
 - 2. When Extra Work is authorized to be paid for on a unit price basis, the Contractor shall include on each monthly estimate the amount of Work done that month.
 - 3. When Extra Work is authorized to be paid for on a Force Account basis, the Contractor shall furnish itemized statements to the Engineer

of the cost of all Force Account work, which shall include a certified copy of the weekly payroll and original receipted bills for all materials used and freight charges paid on same, provided that where materials used are not specifically purchased for use on Extra Work but are taken from the Contractor's stock, the Contractor shall submit an affidavit of the quantity, price, and freight on such materials in lieu of original bills and invoices, which affidavit must be approved by the Engineer.

With each monthly estimate on Work paid for on a Force Account basis, the Contractor shall submit in duplicate a detailed statement showing the following:

- a. Name, class, date, number of hours worked each day, total hours, rate and extension for each laborer and foreman engaged.
- b. Designation, number of hours worked each day, total hours, rental rate and extension for each truck, and unit of machinery engaged.
- c. Quantity of materials, price and extension.
- d. Freight on materials.
- e. When the Extra Work is complete, the cost of Property Damages, Liability, Worker's Compensation and Unemployment Insurance.

B. All Extra Work done by Force Account will be paid for in the following manner:

1. For all labor, and foreman in direct charge of the specific work, the Contractor shall receive the current local rate of wage, to be agreed upon in writing before beginning work, for each and every hour that

said labor, teams and foreman are actually engaged in such work; to which shall be added an amount equal to 10 percent thereof. No allowance shall be made for general superintendence and use of small tools and ordinary equipment.

2. For the cost of Property Damage, Liability, Worker's Compensation and Unemployment Insurance required for Force Account Work, the Contractor shall receive the actual cost to which no percentage shall be added. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such insurance.
3. For materials, the Contractor shall receive the actual cost of such material delivered to the Work, including the freight charges, as shown by original receipted bills; to which shall be added an amount equal to 10 percent of the sum thereof.
4. For any machinery or special equipment other than small tools, including pertinent fuel and lubricants, which it may be deemed necessary or desirable to use, the Contractor shall be allowed a reasonable rental price to be agreed upon in writing before such work is begun, for the time that such equipment is in use on the Work and to which sum no percentage shall be added.

No Extra Work will be paid for unless unit prices or wages have been agreed upon in writing before such work is started.

The compensation as above provided in 1, 2, 3, and 4 shall be accepted by the Contractor as payment in full for Extra Work done on a Force Account basis including superintendence, general expense, overhead, use of tools and equipment for which no rental is allowed, Contract Bonds and profit.

**8.19 ACCEPTANCE OF FINAL
PAYMENT CONSTITUTES RELEASE:**

The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor for all things done or furnished in connection with this Work and for every act and neglect of the Owner and other relating to or arising out of this Work. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from any obligations under this Contract or the Contract Bonds.

8.20 DISTURBED AREAS:

All areas that are disturbed due to direct or indirect construction operations shall be restored by the Contractor to a condition equal or better than the condition of the area prior to the operations.

END OF SECTION