

**GENERAL PROVISIONS
COMMERCIAL FIXED-PRICE CONSTRUCTION SUBCONTRACT**

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1. SCOPE OF GENERAL PROVISIONS

(a) The titles and subheadings used in these General Provisions, as well as in other parts of the Contract documents, are for convenience of reference only and shall not be taken, or considered, as having any bearing on the interpretation of said Contract documents. All documents and clauses in this Contract shall be read so as to be consistent to the extent practicable. In the event of any inconsistency between provisions of this Contract, the order of precedence for the documents and clauses in this Contract shall be the typed provisions in the Schedule of this Contract, the preprinted provisions of this Contract, and any documents incorporated herein by reference.

(b) Specific terms contained in the Contract documents shall be taken to import meaning with respect to matters therein specifically set forth and shall not be construed as defining or limiting any general term or condition contained in the Contract documents irrespective of the relative position of the terms in this Contract.

(c) Wherever in the Contract specifications or drawings the words directed, required, permitted, ordered, designated, prescribed, or words of like import are used, it shall be understood that the direction, requirement, permission, order, designation, or prescription of MARTIN MARIETTA's specifically designated Materiel Representative is intended and similarly the words approved, acceptable, satisfactory, or words of like import shall mean approved by, acceptable to, or satisfactory to such representative, unless otherwise expressly stated.

(d) All notices, orders, directions, determinations, requirements, consents, approvals, or ratifications under this Contract shall be in writing. No oral statement shall in any manner or degree modify or otherwise affect the terms of this Contract; and, except as otherwise herein provided, no reimbursement shall be made for any extra work or material unless the same has been ordered in writing by the authorized MARTIN MARIETTA Materiel Representative.

(e) The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the documents is to include all labor and materials, equipment, and transportation required for the proper execution of the work.

2. DEFINITIONS

(a) "CONTRACTOR" means the individual, partnership, corporation, joint venture or other entity contracting to perform the work hereunder.

(b) "MARTIN MARIETTA" means Martin Marietta Corporation acting through its duly authorized Materiel Representative.

(c) "MARTIN MARIETTA Materiel Representation" or "Materiel Representative" means any duly authorized Buyer or Subcontract Administrator employed by MARTIN MARIETTA.

(d) "Site" shall mean the physical place or places where the construction work called for in this Contract will remain when work on it has been completed. It includes other adjacent or nearby property used by the CONTRACTOR or subcontractors in such construction which can reasonably be said to be included in the "site".

(e) Except as otherwise provided in this Contract, the term "subcontract" means all contracts placed by the CONTRACTOR or lower tier subcontractors for the specific purpose of performing any portion of the work under this Contract, and includes but is not limited to purchase orders and changes, or modifications thereto.

(f) "Subcontractor" means those having a direct Contract with the CONTRACTOR for the performance of any part of the work called for hereunder. The term shall also include one who merely furnishes material.

3. APPLICABLE LAWS AND REGULATIONS

This Contract shall be governed by, subject to, and construed according to the laws of the State of Colorado. The CONTRACTOR shall give all notices and comply with all applicable federal, state and local laws, ordinances, codes, rules and regulations bearing on the conduct of the work as drawn and specified and shall, without additional expense to MARTIN MARIETTA, obtain all licenses and permits required for the prosecution of the work. All employees of the CONTRACTOR shall be subject to the applicable rules and regulations governing MARTIN MARIETTA employees while on MARTIN MARIETTA premises.

4. ASSIGNMENT

Any assignment or delegation of this Contract or rights or duties hereunder by the CONTRACTOR shall be void, unless prior written consent thereto is given by MARTIN MARIETTA. Any monies due, or to become due hereunder, may be assigned, provided that such assignment shall not be binding upon MARTIN MARIETTA until the assignment agreement is accepted and acknowledged in writing by MARTIN MARIETTA, and remains subject to any proper deductions or set-offs against such monies.

5. BANKRUPTCY

Subject to the rights of any trustee in bankruptcy and to applicable law, in the event of the appointment of a trustee, receiver, or liquidator for all or a portion of CONTRACTOR's property, or for any act of bankruptcy by the CONTRACTOR as defined in the Bankruptcy Act, as amended, or for any voluntary or involuntary petition in bankruptcy for the CONTRACTOR, MARTIN MARIETTA may terminate the right of the CONTRACTOR to proceed with the further performance of this Contract without further obligation, except that MARTIN MARIETTA shall be obliged to pay for any article or services delivered and accepted prior to any of the foregoing occurrences.

6. BONDS

(a) Payment Bonds - The CONTRACTOR shall furnish a payment bond with good and sufficient surety or sureties on MARTIN MARIETTA Form PR 107D for the protection of persons furnishing material or labor in connection with the performance of the work under this Contract. The penal sum of such payment bond shall be 100% of the Contract price.

(b) Performance Bonds - The CONTRACTOR shall furnish a performance bond with good and sufficient surety or sureties on MARTIN MARIETTA Form PR 63D in connection with the performance of the Contract work. The penal sum of such performance bond shall be 100% of the Contract price.

(c) Date of Bonds - Bonds required hereunder shall be dated as of the same date as this Contract and shall be furnished by the CONTRACTOR to MARTIN MARIETTA at the time of execution of this Contract.

(d) Additional Bond Security - If any surety upon any bond furnished in connection with this Contract becomes unacceptable to MARTIN MARIETTA, or if the surety fails to furnish reports as to his financial condition as requested by MARTIN MARIETTA, the CONTRACTOR shall promptly furnish additional security as shall be required to protect the interests of MARTIN MARIETTA and of persons supplying labor or materials in the prosecution of the work contemplated by this Contract.

(e) The duty of securing required bonds for this Contract and riders thereto shall be upon the CONTRACTOR.

(f) In the event any changes, alterations, modifications, or amendments are made from time to time to this Contract or plans or specifications, subsequent to the date of bonds furnished hereunder, the CONTRACTOR shall secure from the Surety a Bond rider to the effect that the Surety waives notice and Right of Discharge by reason of such action.

(g) Bonds will also contain a provision to the effect that if the CONTRACTOR fails to give the Surety notice of changes, alterations, modifications, or amendments to this Contract, Surety shall not be released of liability under existing bonds or any riders issued thereto. MARTIN MARIETTA shall have the right to withhold any payments due the CONTRACTOR hereunder until such time as the CONTRACTOR secures the bonds required or riders thereto, and the same have been approved by MARTIN MARIETTA.

7. CHANGES

(a) The MARTIN MARIETTA Materiel Representative may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this Contract, in any one or more of the following:

- (1) Drawings, designs, processes, or specifications;
- (2) Inspection, delivery, or acceptance methods and/or schedules; and
- (3) Work schedules (i.e., hours of the day, days of the week, etc.

(b) If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, an equitable adjustment shall be made in the Contract price, the schedule, or both, and the Contract shall be modified accordingly.

(c) The CONTRACTOR shall submit any "proposal for adjustment" (hereafter referred to as "proposal") under this clause within twenty (20) days from the date of receipt of the written order. However, if the MARTIN MARIETTA Materiel Representative decides that the facts

justify it, the MARTIN MARIETTA Materiel Representative may receive and act upon a proposal submitted before final payment of the Contract.

(d) Prior to the issuance of a change order under this Contract, MARTIN MARIETTA may solicit from the CONTRACTOR written agreement as to the maximum (in the case of an increase) or minimum (in the case of a decrease) adjustment to be made in the price and/or in the schedule (or time of performance), by reason of the change. MARTIN MARIETTA may also solicit such agreement on limitations on the adjustments to any other provisions of the Contract which may be subject to equitable adjustment by reason of the change. The CONTRACTOR shall promptly submit a "not-to-exceed" (or "no-less-than") amount or maximum (or minimum) schedule adjustment when so requested by MARTIN MARIETTA. Any such written agreement shall then be cited in the change order and upon its issuance shall be deemed to become part of the Contract. In no event shall the definitive equitable adjustment exceed the maximum (or be less than the minimum) price and/or delivery schedule (or time of performance) adjustments so established, nor otherwise be inconsistent with other adjustment limitations so established. Except with respect to such limitations, nothing contained herein shall affect the right of the Parties to an equitable adjustment by reason of the change, pursuant to this clause.

(e) MARTIN MARIETTA's engineering and technical personnel may from time to time render assistance or give technical advice to, or effect an exchange of information with, CONTRACTOR personnel in a liaison effort concerning the work to be performed hereunder. However, such exchange of information or advice shall not vest the CONTRACTOR with the authority to change the work to be performed hereunder or the provisions of the Contract, nor shall such change in work or provisions of the Contract be binding upon MARTIN MARIETTA unless incorporated as a change in accordance with paragraph (a) hereof.

(f) Unless expressly stipulated elsewhere in this Contract as being excepted from this provision, wherever this Contract provides for submittal of designs, components, processes, or other items for review or approval by MARTIN MARIETTA, such reviews or approvals shall not be construed as a complete check as to the adequacy of said design or item, nor as an agreement that the design or items will meet the requirements of the Statement of Work, nor as any change to the requirements of the Statement of Work. Such reviews and approvals shall in no way relieve the CONTRACTOR of the responsibility for any error or deficiency which may exist in the submitted design or other items, as the CONTRACTOR shall be responsible for meeting all the requirements of the contract.

(g) If the CONTRACTOR's proposal includes the cost of property made obsolete or excess by the change, MARTIN MARIETTA shall have the right to prescribe the manner of the disposition of the property.

(h) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the CONTRACTOR from proceeding with the Contract as changed.

8. COMPOSITION OF THE CONTRACTOR

If the CONTRACTOR hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

9. DIFFERING SITE CONDITIONS

(a) The CONTRACTOR shall promptly, and before the conditions are disturbed, but in no event later than 48 hours after discovery, give a written notice to the MARTIN MARIETTA Materiel Representative of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.

(b) The MARTIN MARIETTA Materiel Representative shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the CONTRACTOR's cost of, or the time required for, performing any part of the work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment accounting solely for CONTRACTOR increased costs or additional time of performance (with no allowance for profit) may be made under this clause and this Contract modified in writing accordingly.

(c) No request by the CONTRACTOR for an equitable adjustment to this Contract under this clause shall be allowed, unless the CONTRACTOR has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the MARTIN MARIETTA Materiel Representative upon good cause shown.

(d) No request by the CONTRACTOR for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

10. DISPUTES

In the event that any dispute arising under or relating to this Contract cannot be resolved by settlement between the Parties, either Party may litigate any such dispute in any court of competent jurisdiction. Pending resolution of any such dispute by settlement or by final judgment, the CONTRACTOR shall proceed diligently with performance of this Contract, and shall comply with MARTIN MARIETTA's written instructions.

11. GRATUITIES

(a) MARTIN MARIETTA may by written notice to the CONTRACTOR terminate the right of the CONTRACTOR to proceed under this Contract if MARTIN MARIETTA has a reasonable cause to believe that gratuities (in the form of entertainment, gifts, or otherwise), were offered or given by the CONTRACTOR, or any agent or representative of the CONTRACTOR, to any officer or employee of MARTIN MARIETTA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amendment, or making of any determination with respect to the performing of such contract.

(b) In the event this Contract is terminated as provided in paragraph (a) hereof, MARTIN MARIETTA shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a material breach of the Contract by the CONTRACTOR.

(c) The rights and remedies of MARTIN MARIETTA provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

12. HAZARDOUS MATERIALS NOTIFICATION

Prior to bringing any hazardous material or chemical (as determined by OSHA regulations at 29 C.F.R. Section 1910.1200(d) onto MARTIN MARIETTA property or work sites, the CONTRACTOR shall provide a "Material Safety Data Sheet" for each such material or chemical to the Occupational Safety and Health Department of MARTIN MARIETTA. The form of the Material Safety Data Sheet shall be OSHA Form 20 or equivalent, containing all of the information required by 29 C.F.R. Section 1910.1200(g).

13. INSPECTION AND ACCEPTANCE

(a) The CONTRACTOR shall provide and maintain an inspection system in accordance with sound business practice and as may be otherwise provided in this Contract. Records of all inspection work by the CONTRACTOR shall be kept complete and available to MARTIN MARIETTA during the performance of this Contract and for three (3) years after final payment, and in such manner as may be specified elsewhere in this Contract.

(b) All material and workmanship furnished by the CONTRACTOR, its subcontractors and suppliers shall be subject to inspection, examination and test by MARTIN MARIETTA at reasonable times, to the extent practicable, during manufacture or construction and at any and all places where such manufacture or construction is carried on. MARTIN MARIETTA may also inspect the plant or plants of the CONTRACTOR or of any of its subcontractors and suppliers engaged in the performance of this Contract. The CONTRACTOR and its subcontractors, without additional charge, shall provide promptly all reasonable data, facilities, labor, materials, and assistance for MARTIN MARIETTA's inspectors' performance of their duties. All inspections and tests shall be performed in such manner as not to unduly delay the work. The CONTRACTOR shall be charged with any additional cost of inspection when materials and workmanship are not ready at the time specified for inspection. No inspection or test made prior to final inspection and acceptance shall relieve the CONTRACTOR from responsibility for defects or other failure to meet the requirements of this Contract.

(c) Should it be considered necessary or advisable by MARTIN MARIETTA at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the CONTRACTOR shall upon request promptly furnish all necessary facilities, labor and material. If such work is found to be defective or nonconforming in any material respect, the CONTRACTOR shall defray all the expenses of such examination and of satisfactory reconstruction.

(d) MARTIN MARIETTA shall have the right to reject defective material or workmanship or to require its correction. Rejected workmanship shall be immediately corrected and rejected material shall be immediately

replaced with proper material at CONTRACTOR's sole expense. The CONTRACTOR shall promptly segregate and remove the rejected material from the premises. If the CONTRACTOR fails to proceed at once with the replacement of rejected material or the correction of defective workmanship, MARTIN MARIETTA may, at its sole discretion, (i) by contract or otherwise, replace such material or correct such workmanship and charge to the CONTRACTOR the cost occasioned MARTIN MARIETTA thereby; (ii) without further notice terminate this Contract for default, in accordance with the clause hereof titled "Termination for Default"; or (iii) require a reduction in price which is equitable under the circumstances. MARTIN MARIETTA may also charge the CONTRACTOR for any additional cost of inspection or test when prior rejection makes reinspection necessary.

(e) When CONTRACTOR deems the work finally complete, CONTRACTOR shall give MARTIN MARIETTA notice thereof in writing. After receipt of such notice, MARTIN MARIETTA will determine if the work has been completed according to the terms of the Contract and, if so, will notify CONTRACTOR in writing of acceptance thereof as provided below. If the work is incomplete, MARTIN MARIETTA will notify CONTRACTOR of the defects and/or omissions, and CONTRACTOR shall repeat the procedure stated herein until the work has been completed and accepted.

(f) Final acceptance of the work will be confirmed by Letter of Acceptance issued by MARTIN MARIETTA promptly after being satisfied that all requirements of the Contract have been met, and presentation of a complete and executed Final Release of All Claims against MARTIN MARIETTA and Waiver of Lien.

(g) Nothing contained in this clause shall in any way restrict MARTIN MARIETTA's rights under the clause hereof entitled "Warranty and Correction of Defects".

14. INSURANCE-THIRD PARTY LIABILITY

(a) The CONTRACTOR shall be solely responsible for any and all third party liability incurred or caused by it or its subcontractors in connection with the performance of this Contract, and shall indemnify and save MARTIN MARIETTA harmless from all such liability, claims, judgments, costs and attorneys' fees.

(b) The CONTRACTOR shall, at its own expense, procure and maintain the following insurance:

- (1) Worker's Compensation and Employer's Liability Insurance. The CONTRACTOR shall comply with applicable federal and state workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy. Employer's liability coverage of at least \$100,000 is required, except in states with exclusive or monopolistic funds that do not permit worker's compensation to be written by private carriers.
- (2) General Liability Insurance. Bodily injury and property damage liability insurance coverage is required, written on the comprehensive form of policy with minimum limits of \$500,000 per occurrence.
- (3) Automobile Liability Insurance. Automobile liability insurance written on the comprehensive form of policy is required. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in the performance of the Contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.
- (4) Aircraft Liability Insurance. When aircraft are used in connection with performing the Contract, aircraft public and passenger liability insurance coverage shall be at least \$200,000 per person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(c) Prior to the commencement of work hereunder, the CONTRACTOR shall furnish to MARTIN MARIETTA a certificate or written statement evidencing issuance of the above required insurance. The policies of required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of MARTIN MARIETTA in such insurance shall not be effective sooner than forty-five (45) days after written notice thereof to MARTIN MARIETTA. In the event the CONTRACTOR fails to furnish such certificates prior to the commencing of work or to continue to maintain such insurance during the performance of the Contract, MARTIN MARIETTA shall have the right to terminate this Contract for default, or to withhold any payments or partial payments required to be made under this Contract and shall have the right to continue withholding any or all of said payments so long as the CONTRACTOR has not complied with the requirements of this clause.

(d) The CONTRACTOR shall also require all of its subcontractors to comply with the foregoing insurance coverage, limits and certification requirements prior to any of such subcontractors performing work at the site.

15. LEGAL ACTION AND INTEREST

(a) In the event that MARTIN MARIETTA brings any lawsuit or other legal proceeding to enforce its rights against the CONTRACTOR under this Contract and/or defends any action brought by the CONTRACTOR against it, and prevails in such action or defense, the CONTRACTOR shall pay all court costs and reasonable attorneys' fees incurred by MARTIN MARIETTA in such action or defense.

(b) In addition, whether or not litigation is commenced, the CONTRACTOR shall pay simple interest at the rate of twelve (12) percent per annum on any sum due to MARTIN MARIETTA from the date due until paid, unless paid within thirty (30) days of becoming due.

16. LIMITATION OF OVERHEAD AND PROFIT

As a basis for negotiation for claims under the provisions hereof entitled "Changes" and "Suspension of Work", the following limitations of overhead and profit shall apply:

(a) On labor performed by the CONTRACTOR, CONTRACTOR's combined overhead and profit shall not exceed 15.5% of the negotiated direct labor cost of these changes, plus a bonding charge, as applicable, not to exceed 1%.

(b) On labor performed by the CONTRACTOR's subcontractor, the combined overhead and profit to the CONTRACTOR and his subcontractor together shall not exceed 21.3% of the negotiated direct labor cost of these changes, plus a bonding charge, as applicable, not to exceed 1%.

(c) On material furnished by the CONTRACTOR, CONTRACTOR's combined overhead and profit shall not exceed 15.5% of the actual material cost, plus a bonding charge, as applicable, not to exceed 1%.

(d) On material furnished by the CONTRACTOR's subcontractor, the combined overhead and profit to the CONTRACTOR, and his subcontractor together shall not exceed 21.3% of the actual material cost of these changes, plus a bonding charge, as applicable, not to exceed 1%.

17. LIMITS OF CONTRACT

This Contract integrates, merges, and supersedes all prior offers, negotiations or agreements concerning the subject matter hereof and constitutes the entire agreement between the parties.

18. MARTIN MARIETTA PROPERTY

(Applicable if MARTIN MARIETTA property is furnished to the CONTRACTOR under this Contract.)

(a) MARTIN MARIETTA-furnished property.

(1) MARTIN MARIETTA shall deliver to the CONTRACTOR, for use in connection with and under the terms of this Contract, the MARTIN MARIETTA-furnished property described in the Schedule or specifications together with any related data and information that the CONTRACTOR may request and is reasonably required for the intended use of the property (hereinafter referred to as "MARTIN MARIETTA-furnished property").

(2) The delivery or performance dates for this Contract are based upon the expectation that MARTIN MARIETTA-furnished property suitable for use (except for property furnished "as is") will be delivered to the CONTRACTOR at the times stated in the Schedule or, if not so stated, in sufficient time to enable the CONTRACTOR to meet the Contract's delivery or performance dates.

(3) If MARTIN MARIETTA-furnished property is received by the CONTRACTOR in a condition not suitable for the intended use, the CONTRACTOR shall, upon receipt of it, notify MARTIN MARIETTA detailing the facts, and, as directed by MARTIN MARIETTA and at MARTIN MARIETTA's expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the CONTRACTOR, MARTIN MARIETTA shall make an equitable adjustment as provided in paragraph (h) of this clause. This provision does not apply to property furnished "as is".

(4) If MARTIN MARIETTA-furnished property is not delivered to the CONTRACTOR by the required time, MARTIN MARIETTA shall, upon the CONTRACTOR's timely written request, make a determination of the delay, if any, caused the CONTRACTOR and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) Changes in MARTIN MARIETTA-furnished property.

(1) MARTIN MARIETTA may, by written notice, (i) decrease the MARTIN MARIETTA-furnished property provided or to be provided under this Contract, or (ii) substitute other MARTIN MARIETTA-furnished property for the property to be provided by MARTIN MARIETTA or to be acquired by the CONTRACTOR for MARTIN MARIETTA, under this Contract. The CONTRACTOR shall promptly take such action as MARTIN MARIETTA may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the CONTRACTOR's written request, MARTIN MARIETTA shall make an equitable adjustment to the Contract in accordance with paragraph (h) of this clause, if MARTIN MARIETTA has agreed in the Schedule to make the property available for performing this Contract and there is any -

(i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) Title in MARTIN MARIETTA-furnished property.

(1) MARTIN MARIETTA shall retain title to all MARTIN MARIETTA-furnished property.

(2) Title to MARTIN MARIETTA property shall not be affected by its incorporation into or attachment to any property not owned by MARTIN MARIETTA nor shall MARTIN MARIETTA property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the CONTRACTOR for MARTIN MARIETTA under this Contract shall pass to and vest in MARTIN MARIETTA when its use in performing this Contract commences or when MARTIN MARIETTA has paid for it, whichever is earlier, whether or not title previously vested in MARTIN MARIETTA.

(4) If this Contract contains a provision directing the CONTRACTOR to purchase material for which MARTIN MARIETTA will reimburse the CONTRACTOR as a direct item of cost under this Contract -

- (i) Title to material purchased from a vendor shall pass to and vest in MARTIN MARIETTA upon the vendor's delivery of such material; and
- (ii) Title to all other material shall pass to and vest in MARTIN MARIETTA upon -
 - (A) Issuance of the material for use in Contract performance;
 - (B) Commencement of processing of the material or its use in Contract performance; or
 - (C) Reimbursement of the cost of the material by MARTIN MARIETTA, whichever occurs first.

(d) Use of MARTIN MARIETTA property. MARTIN MARIETTA property shall be used only for performing this Contract, unless otherwise provided in this Contract or approved by MARTIN MARIETTA.

(e) Property administration.

- (1) The CONTRACTOR shall be responsible and accountable for all MARTIN MARIETTA property provided under this Contract.
- (2) The CONTRACTOR shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of MARTIN MARIETTA property.
- (3) If damage occurs to MARTIN MARIETTA property, the risk of which has been assumed by MARTIN MARIETTA under this Contract, MARTIN MARIETTA shall replace the items or the CONTRACTOR shall make such repairs as MARTIN MARIETTA directs. However, if the CONTRACTOR cannot effect such repairs within the time required, the CONTRACTOR shall dispose of the property as directed by MARTIN MARIETTA. When any property for which MARTIN MARIETTA is responsible is replaced or repaired, MARTIN MARIETTA shall make an equitable adjustment in accordance with paragraph (h) of this clause.
- (4) The CONTRACTOR represents that the Contract price does not include any amount for repairs or replacement for which MARTIN MARIETTA is responsible. Repair or replacement of property for which the CONTRACTOR is responsible shall be accomplished by the CONTRACTOR at its own expense.

(f) Access. MARTIN MARIETTA and its designees shall have access at all reasonable times to the premises in which any MARTIN MARIETTA property is located for the purpose of inspecting the MARTIN MARIETTA property.

(g) Risk of loss. Unless otherwise provided in this Contract, the CONTRACTOR assumes the risk of and shall be responsible for, any loss or destruction of, or damage to, MARTIN MARIETTA property upon its delivery to the CONTRACTOR or upon passage of title to MARTIN MARIETTA under paragraph (c) of this clause and for any other direct, indirect, special, incidental or consequential damages caused to MARTIN MARIETTA on account of such loss, destruction or damage. However, the CONTRACTOR is not responsible for reasonable wear and tear to MARTIN MARIETTA property or for MARTIN MARIETTA property properly consumed in performing this Contract.

(h) Equitable adjustment. When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, MARTIN MARIETTA may initiate an equitable adjustment in favor of itself. The right to an equitable adjustment shall be the CONTRACTOR's exclusive remedy. MARTIN MARIETTA shall not be liable for breach of contract or otherwise for -

- (1) Any delay in delivery of MARTIN MARIETTA-furnished property;
- (2) Delivery of MARTIN MARIETTA-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of MARTIN MARIETTA-furnished property; or

- (4) Failure to repair or replace MARTIN MARIETTA property for which MARTIN MARIETTA is responsible.

(i) Final accounting and disposition of MARTIN MARIETTA-furnished property. Upon completing this Contract, or at such earlier dates as may be fixed by MARTIN MARIETTA, the CONTRACTOR shall submit, in a form acceptable to MARTIN MARIETTA, inventory schedules covering all items of MARTIN MARIETTA property (including any resulting scrap) not consumed in performing this Contract or delivered to MARTIN MARIETTA. The CONTRACTOR shall prepare for shipment, delivery f.o.b. origin, or dispose of the MARTIN MARIETTA property as may be directed or authorized by MARTIN MARIETTA. The net proceeds of any such disposal shall be credited to the Contract price or shall be paid to MARTIN MARIETTA as MARTIN MARIETTA directs.

(j) Abandonment and restoration of CONTRACTOR's premises. Unless otherwise provided herein, MARTIN MARIETTA:

- (1) May abandon any MARTIN MARIETTA property in place, at which time all obligations of MARTIN MARIETTA regarding such abandoned property shall cease; and
- (2) Have no obligation to restore or rehabilitate the CONTRACTOR's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the MARTIN MARIETTA-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other MARTIN MARIETTA property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) Communications. All communications under this clause shall be in writing.

19. MATERIAL AND WORKMANSHIP

(a) Unless otherwise specifically provided in this Contract, all equipment, material, and articles incorporated in the work covered by this Contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the CONTRACTOR may at its option, use any equipment, material, article, or process which, in the judgment of MARTIN MARIETTA is equal to that named. Approvals of equals will not relieve the CONTRACTOR of responsibility for adequate fulfillment of the various parts of the work, or from specified guarantees and maintenance standards. Any requests for substitution which may be offered shall have been submitted for approval prior to award of this Contract. Unless specified in the Schedule, no such substitution will be permitted and the CONTRACTOR will be deemed to have hereby agreed to furnish only the brand names specified in the contract documents.

(b) No materials or supplies for the work contracted for shall be purchased by the CONTRACTOR or by any subcontractor working under CONTRACTOR which shall be subject to any chattel mortgage or under a conditional sale or other agreement in which an interest is retained by another party. The CONTRACTOR warrants that the title to all materials and supplies used by the CONTRACTOR in the performance of the work hereunder shall be clear of all encumbrances of any nature whatsoever.

(c) Unless waived in writing by MARTIN MARIETTA, all tests or trials shall be made in the presence of a duly authorized representative of MARTIN MARIETTA. When the presence of the inspector is waived, sworn statements, in triplicate, of the test made and results thereof shall be furnished to MARTIN MARIETTA by the CONTRACTOR immediately after the tests are made. Costs of all tests and trials, including concrete aggregate and cylinder tests, and soil analysis, shall be borne by the CONTRACTOR.

(d) All work under this Contract shall be performed in a skillful and workmanlike manner. MARTIN MARIETTA may, in writing, require the CONTRACTOR to remove from the work any employee MARTIN MARIETTA deems incompetent, careless, or otherwise objectionable. The CONTRACTOR shall additionally be responsible for requiring each employee engaged on the site to display such identification as may be approved and directed by MARTIN MARIETTA. All prescribed identification shall immediately be delivered to MARTIN MARIETTA, for cancellation, when such employee is no longer engaged on the site. When required by MARTIN MARIETTA, the CONTRACTOR shall also obtain

and submit fingerprints of all persons employed or to be employed on the project.

20. NOTICE OF LABOR DISPUTES

(a) Whenever the CONTRACTOR has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the CONTRACTOR shall immediately give notice thereof, including all relevant information with respect thereto, to MARTIN MARIETTA.

(b) The CONTRACTOR agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify its next higher tier subcontractor or MARTIN MARIETTA, as the case may be, of all relevant information concerning such dispute.

21. NO WAIVER

(a) No waiver, alteration, or modification of any of the provisions of this Contract shall be binding on MARTIN MARIETTA unless evidenced by a written notice or amendment signed by an authorized Materiel Representative of MARTIN MARIETTA. MARTIN MARIETTA's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or MARTIN MARIETTA's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, privileges, or breaches, whether of the same or similar type.

(b) MARTIN MARIETTA's approval of the CONTRACTOR's design or material shall not relieve the CONTRACTOR of any warranties or of any other requirements of this Contract; nor shall waiver by MARTIN MARIETTA of any drawings or specification requirements for one or more articles constitute a waiver of such requirements for the remaining articles to be delivered under this Contract unless so stated by MARTIN MARIETTA in writing. The provisions of this clause shall not limit or affect the rights of MARTIN MARIETTA under the clause entitled "Inspection and Acceptance".

22. OPERATIONS, STORAGE AREAS AND TEMPORARY CONSTRUCTION FACILITIES

(a) All operations of the CONTRACTOR (including storage of materials) upon MARTIN MARIETTA premises shall be confined to areas authorized or approved by MARTIN MARIETTA. No unauthorized or unwarranted entry upon or passage through, or storage or disposal of materials shall be made upon MARTIN MARIETTA premises. Premises adjacent to the construction will be made available for use by the CONTRACTOR without cost whenever such use will not interfere with other contractors' uses or purposes. The CONTRACTOR shall be liable for damage caused by it to MARTIN MARIETTA premises. The CONTRACTOR shall hold and save MARTIN MARIETTA, its officers and agents, free and harmless from liability of any nature or kind arising from any use, trespass or damages occasioned by its operations on premises of third persons.

(b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the CONTRACTOR only with the approval of MARTIN MARIETTA and shall be built with labor and materials furnished by the CONTRACTOR without expense to MARTIN MARIETTA. Such temporary buildings and/or utilities shall remain the property of the CONTRACTOR and will be removed by the CONTRACTOR at its sole expense upon the completion of the work.

(c) The CONTRACTOR shall use only established roadways or construct and use such temporary roadways as may be authorized by MARTIN MARIETTA. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state or local law or regulation. When it is necessary to cross curbing or sidewalks, protection against damage shall be provided by the CONTRACTOR and any damaged roads, curbs, or sidewalks shall be repaired by, and at the expense of the CONTRACTOR, to MARTIN MARIETTA's satisfaction.

(d) CONTRACTOR shall furnish adequate toilet facilities for its employees. Toilet facilities shall conform to all local sanitary regulations and be located as approved by MARTIN MARIETTA.

(e) Temporary construction facilities and any connections to utilities shall be removed by and at the sole expense of the CONTRACTOR.

The site occupied by such facilities and connections shall be restored to a condition satisfactory to MARTIN MARIETTA.

(f) The work shall be done without interference with the ordinary use of streets, easements and passages and the CONTRACTOR shall cooperate with other contractors of MARTIN MARIETTA and MARTIN MARIETTA employees as may be required by the circumstances or directed by MARTIN MARIETTA. The CONTRACTOR shall not commit or permit any act which will interfere with the performance of work by any other contractors or MARTIN MARIETTA employees whether at the site or not.

23. PATENT INDEMNITY AND NOTICE OF INFRINGEMENT

(a) CONTRACTOR hereby agrees to indemnify and save harmless MARTIN MARIETTA, its employees, customers, assigns, and others claiming under MARTIN MARIETTA from liability from any actual or alleged patent, copyright, trademark or trade secret infringement by reason of any manufacture, use, or sale of any items delivered by CONTRACTOR under this Contract, or for any items manufacturable from reports, drawings, blueprints, data, or technical information delivered by CONTRACTOR under this Contract. Such liability shall include but is not limited to damages, costs, attorneys' fees, and expenses.

(b) The CONTRACTOR shall report to MARTIN MARIETTA promptly and in reasonable written detail, each notice or claim of patent infringement based on the performance of this Contract of which the CONTRACTOR has knowledge.

(c) In the event of any suit against MARTIN MARIETTA, or any claim against MARTIN MARIETTA made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of the performance of this Contract or out of the use of any supplies furnished or work or services performed hereunder, the CONTRACTOR shall furnish to MARTIN MARIETTA, upon request, all evidence and information in possession of the CONTRACTOR pertaining to such suit or claim.

24. PAYMENTS

(a) MARTIN MARIETTA shall pay the Contract price as provided in this Contract.

(b) MARTIN MARIETTA will make progress payments monthly as the work progresses, based on estimates of acceptable work accomplished submitted by the CONTRACTOR and approved by MARTIN MARIETTA. If requested by MARTIN MARIETTA, the CONTRACTOR shall furnish a breakdown of the total Contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In preparing estimates of work accomplished, the material delivered on the site and preparatory work completed may be taken into consideration. Such payments shall be made on submission of itemized requests by the CONTRACTOR and shall be subject to reduction for overpayments or increase for underpayments on preceding payments to the CONTRACTOR.

(c) In making such progress payments there shall be retained ten (10) percent of the approved estimated amount until final completion and acceptance of all work covered by the Contract; provided, that upon completion and acceptance of each building, or other division of the Contract, on which the price is stated separately in the Contract, payment may be made in full, including retained percentage thereon, less authorized deductions.

(d) All material and work covered by progress payments made shall thereupon become the sole property of MARTIN MARIETTA but this provision shall not be construed as relieving the CONTRACTOR from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of MARTIN MARIETTA to require the fulfillment of all of the terms of the Contract.

(e) Upon completion and final acceptance of all work required hereunder as provided in the clause herein entitled "Inspection and Acceptance", the amount due the CONTRACTOR under this Contract will be paid upon the presentation of a properly executed and duly certified voucher therefor and presentation of release of all claims against MARTIN MARIETTA arising by virtue of this Contract, other than claims, in stated amounts, that the CONTRACTOR has specifically excepted from the operation of the release. If the CONTRACTOR's claim to amounts payable under the Contract has been assigned, a release may be required of the assignee at the option of MARTIN MARIETTA.

coordinated with and approved by the MARTIN MARIETTA Material Representative.

27. PROTECTION OF MATERIALS AND WORK PERFORMED

(a) The CONTRACTOR shall at all times protect and preserve all materials, supplies and equipment of every description (including property which may be MARTIN MARIETTA furnished or owned) and all work performed. All reasonable requests of MARTIN MARIETTA to enclose or specially protect such property shall be complied with. If as determined by MARTIN MARIETTA, material, equipment, supplies and work performed are not adequately protected by the CONTRACTOR, such property may be protected by MARTIN MARIETTA and the cost thereof may be charged to the CONTRACTOR or deducted from any payments due the CONTRACTOR.

(b) Any damage to existing structure or work of any kind, or the interruption of a utility service, shall be repaired or restored immediately by and at the expense of the CONTRACTOR.

(c) The necessary materials, tools and equipment to be utilized in the performance of this Contract shall be consigned to and delivered to or by the CONTRACTOR at the site and shall be CONTRACTOR's responsibility to unload and safeguard from all hazards.

(d) The CONTRACTOR shall protect the materials and work from deterioration and damage during construction and shall store and secure flammable material from fire, remove oily rags, waste, and refuse from buildings each night and during cold weather furnish all heat necessary for the proper conduct of the work. CONTRACTOR shall provide and maintain all temporary walkways, roadways, trench covers, barricades, colored lights, danger signals, and other devices necessary to provide for safety and traffic.

28. RECORDS

The CONTRACTOR agrees that MARTIN MARIETTA shall, until the expiration of three years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the CONTRACTOR involving transactions related to this Contract.

29. RELEASE OF INFORMATION

No release of any information, or confirmation or denial of same, with respect to this Contract or subject matter thereof, will be made without the prior coordination and express written approval of MARTIN MARIETTA. This includes but is not limited to news releases (including photographs and films, public announcements or denial or confirmation of same, or interviews with news media representatives) advertisements, brochures, and the like.

30. REMOVAL OF EQUIPMENT AND CLEANUP

(a) The CONTRACTOR shall at all times keep the construction site, including storage areas, free from accumulations of waste material and rubbish; and prior to completion of the work remove any rubbish from and about the premises and all tools, scaffolding equipment, and materials not the property of MARTIN MARIETTA. Upon completion of the construction, the CONTRACTOR shall leave the site in a clean, neat and workmanlike condition satisfactory to MARTIN MARIETTA.

(b) Upon the completion of work, the CONTRACTOR shall remove its equipment, tools, materials, and other articles from the site. Should the CONTRACTOR fail to take prompt action to this end, MARTIN MARIETTA (at its option and without waiver of such other rights as it may have) may after thirty (30) days' notice to CONTRACTOR treat them as abandoned property and thereby dispose or use them as it deems appropriate. The CONTRACTOR shall also sweep all floors broom clean, clean all exterior brickwork and window lights, and remove all rubbish from the property.

31. REPRODUCTION AND USE OF TECHNICAL DATA

(a) For use in performance of this Contract, the CONTRACTOR agrees to and does hereby grant to MARTIN MARIETTA the right to reproduce, use, and dispose of all or any part of the reports, drawings, blueprints, technical data, computer software, and technical information deliverable or delivered to MARTIN MARIETTA pursuant to this Contract, and warrants title to same. The CONTRACTOR agrees to indemnify and hold MARTIN MARIETTA and its assigns harmless from any damages, cost, claims and liability arising out of claims that said reproduction, use, or disposition infringes upon third party rights. MARTIN MARIETTA shall give the CONTRACTOR prompt notice in writing of any suit or action alleging such liability.

(f) Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR delivers to MARTIN MARIETTA complete releases from itself and each of its subcontractors of all liens arising out of this Contract, or receipts in full in lieu thereof, and, an affidavit that so far as it has knowledge or information the release includes all the labor and material for which a lien could be filed; but the CONTRACTOR may, if any subcontractor refuses to furnish a release or receipt in full, furnish a bond satisfactory to MARTIN MARIETTA, to indemnify MARTIN MARIETTA against any lien. If any lien remains unsatisfied after all payments are made, the CONTRACTOR shall refund to MARTIN MARIETTA all monies that the latter may be compelled to pay in discharging such a lien, including all costs and reasonable attorneys' fees.

(g) The obligation of MARTIN MARIETTA to make the payments required under the provisions of this Contract shall, in the discretion of MARTIN MARIETTA, be subject to (1) reasonable deductions on account of defects in material or workmanship, and (2) any claims which MARTIN MARIETTA may have against the CONTRACTOR under or in connection with this Contract. Any overpayments to the CONTRACTOR shall, unless otherwise adjusted, be repaid to MARTIN MARIETTA upon demand.

25. PRESERVATION OF EXISTING VEGETATION

(a) The CONTRACTOR will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site which do not unreasonably interfere with the construction as may be determined by MARTIN MARIETTA. The CONTRACTOR will be responsible for all unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials or tracking of grass areas by equipment.

(b) Care shall be taken by the CONTRACTOR in felling trees, authorized for removal, to avoid any unnecessary damage to vegetation that is to remain in place. Any limbs or branches of trees broken during such operations, shall be trimmed with a clean cut and painted with an approved tree pruning compound. The CONTRACTOR may be required to replace or restore at its own expense all vegetation not protected and preserved as required herein that may be destroyed or damaged.

26. PROGRESS CHARTS

(a) The CONTRACTOR shall, prior to commencement of work, prepare and submit for approval a practicable schedule, showing the order in which the CONTRACTOR proposes to carry on the work, the date on which it will start the several salient features of the work (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time.

(b) The CONTRACTOR shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts and overtime operations, as may be necessary to insure the performance of the work in accordance with the approved progress schedule. If, in the opinion of MARTIN MARIETTA, the CONTRACTOR falls behind the progress schedule, the CONTRACTOR shall take such steps as may be necessary to improve its progress, and MARTIN MARIETTA may require it to increase the number of shifts, overtime operations, days of work, and/or the amount of construction equipment at no additional cost to MARTIN MARIETTA.

(c) Failure of the CONTRACTOR to comply with the requirements of MARTIN MARIETTA under this provision shall be grounds for a determination by MARTIN MARIETTA that the CONTRACTOR is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such determination MARTIN MARIETTA may terminate the CONTRACTOR's right to proceed with the work, or any severable part thereof, in accordance with the clause hereof entitled "Termination for Default".

(d) The term "MARTIN MARIETTA" as used in paragraphs (b) and (c) herein shall be construed to mean only the authorized MARTIN MARIETTA Material Representative. Any direction issued to the CONTRACTOR to provide premium labor in any form must first be

(b) MARTIN MARIETTA shall be under no obligation to restrict disclosure or use, or hold in confidence any data, software, or information which is furnished, delivered, or disclosed under this Contract, or in connection herewith, or as a result hereof, either directly or indirectly, unless and until an agreement to hold same in confidence or restrict disclosure or use is accepted in writing by MARTIN MARIETTA's authorized Materiel Representative. In the absence of such written agreement, MARTIN MARIETTA may ignore and disregard any restrictive legend on any such data and software, which shall be void and of no effect whatsoever. Acceptance by MARTIN MARIETTA of data or software with a restrictive legend not in full compliance with the terms of this Contract shall in no way imply or create a waiver of such terms, unless first authorized by the MARTIN MARIETTA Materiel Representative by written amendment of this Contract.

(c) CONTRACTOR agrees not to deliver or furnish any data or software subject to limited use or reproduction unless otherwise agreed as specified above.

(d) If any services, articles, or parts thereof, contracted for hereunder are performed or made to data, standards, plans, drawings or designs furnished by MARTIN MARIETTA, the CONTRACTOR shall not reproduce, use, or disclose to others any such information without MARTIN MARIETTA's written consent, nor without such written consent, supply or disclose any information regarding any such services or articles, or equipment or any material used therein, nor incorporate in other services, products, or articles any special features of design or manufacture peculiar to the services or articles contracted for under this Contract.

32. SAFETY AND ACCIDENT PREVENTION

(a) In performing work under this Contract on MARTIN MARIETTA property, the CONTRACTOR shall:

- (1) Conform to the specific safety requirements contained in this Contract;
- (2) Comply with the safety rules of MARTIN MARIETTA that concern related activities not directly addressed in this Contract;
- (3) Take all reasonable steps and precautions to prevent accidents and preserve the life and health of MARTIN MARIETTA and CONTRACTOR personnel performing or in any way coming in contact with the performance of this Contract; and
- (4) Take such additional immediate precautions as MARTIN MARIETTA may reasonably require for safety and accident prevention purposes.

(b) The MARTIN MARIETTA Materiel Representative may, by written order, direct additional safety and accident standards as may be required in the performance of this Contract and any adjustments resulting from such direction will be in accordance with the Changes clause of this Contract.

(c) The CONTRACTOR shall immediately notify and promptly report to MARTIN MARIETTA, any accident, incident or exposure resulting in fatality, lost-time, occupational injury or occupational disease; or, contamination of property or property loss of \$10,000 or more arising out of work performed under this Contract; provided, however, the CONTRACTOR will not be required to include in any report an expression of opinion as to the fault or negligence of any employee. In addition, the CONTRACTOR shall comply with any illness, incident and injury experience reporting requirements set forth in the Schedule of the Contract. The CONTRACTOR will investigate all such work-related incidents or accidents to the extent necessary to positively determine the cause, and furnish MARTIN MARIETTA with a report, in such form as MARTIN MARIETTA may require, of the investigative findings, together with proposed and/or completed corrective actions.

(d) Any violation of these safety rules and requirements, unless promptly corrected as directed by the MARTIN MARIETTA Materiel Representative, shall be grounds for termination of this Contract in accordance with the Termination for Default clause of this Contract.

(e) CONTRACTOR shall be responsible for and hereby agrees to indemnify and save MARTIN MARIETTA harmless from any and all:

- (1) damage to the property of MARTIN MARIETTA, the CONTRACTOR or other contractors or subcontractors; or
- (2) injury to employees of MARTIN MARIETTA, the CONTRACTOR, or other contractors or subcontracts; or
- (3) for any liability of whatsoever nature arising out of or in connection with the presence of CONTRACTOR or its subcontractors pursuant to this Contract.

(f) The CONTRACTOR shall cause the substance of this clause including this paragraph (f) and any applicable Schedule Provisions to be inserted in subcontracts of every tier which: (i) amount to \$1,000,000 or more unless MARTIN MARIETTA makes a written determination that this is not required; (ii) require construction, repair, or alteration in excess of \$10,000; or (iii) the CONTRACTOR, regardless of dollar amount, determines that hazardous materials or operations are involved.

33. SECURITY REQUIREMENTS

(a) The provisions of this clause shall apply to the extent that this Contract involves access to security information classified "Confidential" or higher.

(b) MARTIN MARIETTA shall notify the CONTRACTOR of the security classification of this Contract and the elements thereof, and of any subsequent revisions in such security classification, by the use of a Security Requirements Check List (DD Form 254) or other written notification.

(c) The CONTRACTOR agrees to execute, if it has not already done so, a Security Agreement (DD Form 441) with the Government, represented by the Military Department assigned security cognizance over the CONTRACTOR's facility. To the extent MARTIN MARIETTA has indicated as of the date of this Contract, or thereafter indicates a security classification under this Contract as provided in paragraph (b) above, the CONTRACTOR shall safeguard all classified elements of this Contract as provided and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

- (1) The Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on date of this Contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the CONTRACTOR's business; and
- (2) Any amendments to said Manual made after the date of this Contract, notice of which has been furnished to the CONTRACTOR, by the security office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility or representatives of NASA, as applicable, shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the CONTRACTOR in complying with the security requirements under this Contract. Should the Government, through its authorized representatives, determine that the CONTRACTOR is not complying with the security requirements of this Contract, the CONTRACTOR shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If subsequent to the date of this Contract, the security classification or security requirements under this Contract are changed by the Government as provided in this clause and the security costs under this Contract are thereby increased or decreased, the Contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs.

(f) The CONTRACTOR also agrees that it shall determine that any subcontractor proposed by it for the furnishing of supplies and services which will involve access to classified information in the CONTRACTOR's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

(g) The CONTRACTOR agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (g).

34. SITE INVESTIGATIONS AND REPRESENTATIONS

(a) The CONTRACTOR acknowledges that it has investigated and satisfied itself as to the nature and location of the work, the general and local conditions, including but not limited to those bearing upon transportation, disposal, handling and storage of materials; the availability of labor, water, electric power, and roads; the uncertainties of weather, river stages, tides, or similar physical conditions at the site; the conformation and conditions of the ground; the character of equipment and facilities needed preliminary to and during the prosecution of the work and all other matters upon which information is reasonably obtainable and which can in any way affect the work or the cost thereof under this Contract.

(b) The CONTRACTOR further acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site including all exploratory work done by MARTIN MARIETTA, as well as from information presented by the drawings and specifications.

(c) Failure by the CONTRACTOR to acquaint itself with all available information shall not relieve it of responsibility for successfully performing the work. MARTIN MARIETTA assumes no responsibility for any conclusions or interpretations made by the CONTRACTOR based on the information made available by MARTIN MARIETTA or for any understandings reached or representations made by any of its officers, employees or agents prior to the execution of this Contract, unless (1) such understanding or representations are expressly stated in this Contract and (2) this Contract expressly provides that the responsibility therefor is assumed by MARTIN MARIETTA.

(d) Where alterations of and/or additions to existing construction are required under this Contract, the CONTRACTOR shall verify all dimensions and determine all existing conditions which may affect its work and shall be responsible for the accuracy of such dimensions and determinations.

35. SPECIFICATIONS AND DRAWINGS

(a) CONTRACTOR shall comply with all specifications and drawings set forth in the Statement of Work hereof. All work called for in said specifications and drawings shall be accomplished in accordance with the applicable national and local codes.

(b) The CONTRACTOR shall keep on the site a copy of the drawings and specifications and shall at all times give MARTIN MARIETTA access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In any case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to MARTIN MARIETTA, who shall promptly make a determination in writing. Any adjustment by the CONTRACTOR without this determination shall be at its own risk and expense. MARTIN MARIETTA shall furnish from time to time such detail drawings and other information as may be considered necessary, unless otherwise provided.

(c) Omissions and Misdescriptions-Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications or which are customarily performed, shall not relieve the CONTRACTOR from performing such omitted or misdescribed details of work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(d) Checking of Drawings and Dimensions-The CONTRACTOR shall check all drawings furnished him immediately upon their receipt and shall promptly notify MARTIN MARIETTA of any discrepancies. Dimensions marked on drawings shall in general be followed in preference to scale measurements. Large scale detail drawings shall in general govern small scale drawings. The CONTRACTOR shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby. When measurements are affected by field conditions, the CONTRACTOR shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings.

(e) Deviations-Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall not be made until written authority is obtained from MARTIN MARIETTA.

(f) Base Lines and Grades-The CONTRACTOR shall lay out its work from base lines and grades established by MARTIN MARIETTA and shall be responsible for all measurements in connection therewith. The CONTRACTOR shall, at its own expense, furnish all stakes, templates, platforms, equipment, and ranges and labor that may be required in setting and cutting, or laying out any part of the work. The CONTRACTOR will be

held responsible for the proper execution of the work to such lines and grades as may be established or indicated by MARTIN MARIETTA, and all stakes or other marks thus established shall be preserved by it until their removal is authorized by MARTIN MARIETTA. MARTIN MARIETTA will furnish, on request from the CONTRACTOR, all location and limit marks reasonably necessary for the conduct of the work.

(g) All drawings shall become the property of MARTIN MARIETTA, and MARTIN MARIETTA shall be entitled, without further payment or liability to the CONTRACTOR and without further permission to use such drawings and to reproduce them; provided, however, the use of such drawings shall not imply a license to MARTIN MARIETTA under any patent or shall not be construed as affecting the scope of any license otherwise granted to MARTIN MARIETTA under any patent.

(h) The CONTRACTOR shall furnish to MARTIN MARIETTA for all phases of the work under specification sections wherein they apply, a sufficient number of submittals so that MARTIN MARIETTA can retain three (3) copies. Submittals include, but are not limited to, complete sets of certified shop drawings, fabrication and welding procedures, specifications, reports, any applicable standards, and/or catalog data including vendors' delivery dates. This information shall be submitted for approval within 10 days after award of the Contract. Submittals will be marked "approved", "approved as noted", or "disapproved". Submittals marked "approved" or "approved as noted" need not be resubmitted. Submittals marked "disapproved" shall be resubmitted within seven (7) calendar days. All submittals shall be "approved" or "approved as noted" before starting fabrication.

(i) MARTIN MARIETTA review and/or approval of submittals shall not relieve the CONTRACTOR from the responsibility of producing completed and installed work in strict conformance with the Contract requirements. MARTIN MARIETTA will not assume the responsibility for searching out deviations in the CONTRACTOR's submittals or any specifications indicated by the CONTRACTOR on submittals. It is understood that the review and/or approval by MARTIN MARIETTA of the CONTRACTOR's submittals shall not be construed as a complete check as to their adequacy, nor as an agreement that the submittal will meet the requirements of the Contract. Such reviews and/or approvals shall in no way relieve the CONTRACTOR for any error or deficiency which may exist in the submittal as the CONTRACTOR shall be responsible for meeting all requirements of the Contract.

(j) In the event the work set forth in the specifications and drawings does not comply with requirements within the applicable national or local codes, the CONTRACTOR shall notify MARTIN MARIETTA of such fact and MARTIN MARIETTA may, by issuing a Change Order in accordance with the provisions of the Changes clause hereof, authorize compliance by the CONTRACTOR with the requirements of the applicable national or local codes.

(k) The CONTRACTOR shall provide to MARTIN MARIETTA, one (1) set of drawings which accurately portray "as-built" conditions of all construction items within the Contract. Each of these drawings shall be neatly and clearly marked-up (in red) to show all variations between the as-built construction and that indicated or specified by the Contract documents. Where a choice of material, equipment and/or methods is permitted herein, or where variations in the scope or character of the work from that indicated or specified is permitted by subsequent change to the Contract, such choices or variations shall be reflected on these drawings. The as-built drawings shall include such supplementary notes, legends and details as may be necessary for legibility and clear portrayal of the as-built construction. All of the required as-built drawings will be delivered to MARTIN MARIETTA within four (4) weeks after completion of construction.

(l) The requirements of this clause relating to the approval of documents by MARTIN MARIETTA shall apply with equal force and effect to all items required by this Contract to be submitted for either "review"/"approval" or language of similar import.

36. SUBCONTRACTORS

(a) The CONTRACTOR shall at all times select qualified vendors and subcontractors for performance of all subcontract work and the furnishing of materials and supplies. Prior to commencement of necessary procurement on a subcontract basis, MARTIN MARIETTA reserves the right to refuse or reject any subcontractor or supplier. Nothing noted in any subcontract hereunder shall create any contractual relation between the subcontractor and MARTIN MARIETTA, and, further, the rights of MARTIN MARIETTA under this Contract shall not be nullified thereby.

(b) No subcontract shall be made by the CONTRACTOR for performing any work herein contracted for, without the prior written approval of MARTIN MARIETTA.

(c) CONTRACTOR shall keep all invoices for labor, materials, tools, services, etc., incurred in connection with this Contract on a current basis and if required by MARTIN MARIETTA, shall present further evidence that payment therefor has been made.

37. SUPERINTENDENCE

(a) The CONTRACTOR shall provide a competent superintendent with necessary assistants, sufficient and competent management and supervisory personnel on site subject to acceptance by MARTIN MARIETTA and subject to continuing satisfaction to MARTIN MARIETTA. Such superintendence and management shall efficiently supervise the work and be responsible for all requirements of this Contract. If such personnel become unacceptable, MARTIN MARIETTA will present the reasons for dissatisfaction to the CONTRACTOR in writing whereby the CONTRACTOR shall take immediate steps to replace such person(s).

(b) CONTRACTOR superintendence and/or management at the job site shall have the authority to commit the CONTRACTOR to agreements and amendments to this Contract to a sufficient monetary value that will assure the orderly progress of the work. Upon acceptance of the Contract, CONTRACTOR shall provide MARTIN MARIETTA with written notice as to designated personnel and their monetary authority and such authority shall be assumed to remain in force until written notice otherwise is received by MARTIN MARIETTA.

38. SUPERSEDING SPECIFICATIONS

All references in any MARTIN MARIETTA specification incorporated herein to other specifications shall be deemed to include all specifications supplementary to or superseding the specifications so referenced, to the extent that such supplementary or superseding specifications are in effect at the date of CONTRACTOR's latest quotation, unless such referenced specification is identified by specific issue.

39. SUSPENSION OF WORK

(a) MARTIN MARIETTA may order the CONTRACTOR in writing to suspend all or any part of the work of this Contract for such period of time as MARTIN MARIETTA may determine to be appropriate for the convenience of MARTIN MARIETTA. If, without the fault or negligence of the CONTRACTOR, the performance of all or any part of the work is suspended, for an unreasonable period of time, an adjustment may be made by MARTIN MARIETTA for any increase in the cost of performance of the Contract (excluding profit) necessarily caused by the unreasonable suspension, and the Contract shall be modified in writing accordingly. No adjustment shall be made to the extent that performance by the CONTRACTOR would have been prevented by other causes even if the work had not been so suspended. Any claim for adjustment must be asserted to the MARTIN MARIETTA Materiel Representative in writing within twenty-four (24) hours after the termination of the suspension and a proposal for adjustment must be submitted to the MARTIN MARIETTA Materiel Representative in writing within twenty (20) days after the termination of suspension and must fully set forth the amount claimed and adjustment in the period of performance, if any. If an adjustment in the period of performance is requested, the proposal for adjustment shall also separately set forth the amounts required, including premium time, to maintain the present period of performance.

(b) In the event the CONTRACTOR is instructed to vacate an area where work on this job is being performed, the completion schedules will be extended by the amount of time thus lost. If the CONTRACTOR is ordered to vacate for more than one hour at any one time, then the CONTRACTOR will make every reasonable effort to place his labor force in other productive work. If no other work is available, upon receipt of a claim for adjustment acceptable to MARTIN MARIETTA, MARTIN MARIETTA will reimburse the CONTRACTOR for the labor cost (without mark-up) of the time lost in excess of one hour per man but in no event more than 15 hours per man. If the CONTRACTOR is required to vacate an area for more than sixteen (16) normal working hours the provisions of subparagraph (a) above shall apply in lieu of this paragraph.

40. TAXES

Except as otherwise provided in this Contract, the Contract price includes all applicable Federal, State and local taxes and duties.

41. TERMINATION FOR CONVENIENCE

MARTIN MARIETTA, at any time and by written notice, may cancel this Contract or any part thereof at its convenience and for other than defaults as contemplated under the clause entitled "Termination for Default", in which event MARTIN MARIETTA shall be liable for the payment of reasonable

cancellation charges which shall take into account, among other things, expenses already incurred, and the CONTRACTOR's actual liabilities against commitments incident to this Contract. In no event, however, shall MARTIN MARIETTA be liable for cancellation charges in excess of the Contract price.

42. TERMINATION FOR DEFAULT

(a) Time is of the essence of this Contract.

(b) If the CONTRACTOR refuses or fails (i) to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or (ii) fails to complete such work in said time, or (iii) fails to perform any other requirement under this Contract, MARTIN MARIETTA may, by written notice to the CONTRACTOR, terminate this Contract in whole or in part. MARTIN MARIETTA's right to terminate this Contract under subdivisions (b) (i) and (b) (iii) above, may be exercised if the CONTRACTOR does not cure such failure within ten (10) days (or more if authorized in writing by MARTIN MARIETTA) after receipt of the notice from MARTIN MARIETTA specifying the failure.

(c) In the event MARTIN MARIETTA terminates this Contract in whole or in part, MARTIN MARIETTA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, appliances and plant on the work site necessary for completing the work. However, the CONTRACTOR shall continue the work not terminated. The CONTRACTOR and its sureties shall be liable for any damage to MARTIN MARIETTA resulting from the CONTRACTOR's refusal or failure to complete the work within the specified time, whether or not the CONTRACTOR's right to proceed with the work is terminated. This liability includes any excess costs incurred by MARTIN MARIETTA in completing the work; and, if specified in the Schedule of this Contract, liquidated damages for each calendar day of delay until the work is finally accepted.

(d) The right of the CONTRACTOR to proceed shall not be terminated, nor the CONTRACTOR charged with damages under this clause, if the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR. Examples of such causes include acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; freight embargoes; unusually severe weather; and delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the CONTRACTOR and such subcontractors or suppliers; provided, that the CONTRACTOR shall within ten (10) days from the beginning of any such delay, notify MARTIN MARIETTA in writing of the cause of delay.

(e) If, after notice of termination of the CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the clause entitled "Termination for Convenience".

(f) If this Contract is terminated for default, MARTIN MARIETTA may require the CONTRACTOR to transfer title and deliver to MARTIN MARIETTA any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights that the CONTRACTOR has specifically produced or acquired for the terminated portion of this Contract. Upon direction of MARTIN MARIETTA, the CONTRACTOR shall also protect and preserve property in its possession in which MARTIN MARIETTA has an interest.

(g) Failure of MARTIN MARIETTA to enforce any right under this clause shall not be deemed a waiver of any right hereunder. The rights and remedies of MARTIN MARIETTA in this clause are in addition to any other rights and remedies provided by law or under this Contract.

43. TERMS AND CONDITIONS

No terms and conditions other than the terms and conditions set forth in this Contract, including terms and conditions in any document attached to or incorporated by reference in this order, shall be binding upon MARTIN MARIETTA unless accepted by it in writing. Terms and conditions contained in any acknowledgment of this Contract, which are different from or in addition to the terms and conditions of this Contract, shall not be binding on MARTIN MARIETTA, whether or not they would materially alter this Contract, and MARTIN MARIETTA hereby objects thereto. CONTRACTOR will be deemed to have assented to all terms and conditions

contained herein if any part of the articles covered by this Contract is shipped or services are performed.

(j) The remedies provided above shall not be restrictive of, but shall be cumulative and in addition to, all other remedies of MARTIN MARIETTA.

44. USE OF STRUCTURE BEFORE ACCEPTANCE

(a) MARTIN MARIETTA or others may, during the performance of the work, enter the structure for the purpose of performing any necessary work. In doing so MARTIN MARIETTA shall endeavor not to interfere with the CONTRACTOR and the CONTRACTOR shall not interfere with other work being done by or on behalf of MARTIN MARIETTA.

(b) If, prior to completion and final acceptance of all the work, MARTIN MARIETTA takes possession of any structure (whether completed or otherwise) comprising a portion of the work with the intent of retaining possession thereof (as distinguished from temporary possession contemplating return to the CONTRACTOR), then, while MARTIN MARIETTA is in possession, the CONTRACTOR, notwithstanding any other provision herein, shall be relieved of the responsibility for loss or damage to structure other than that resulting from the CONTRACTOR's fault or negligence. Such taking of possession by MARTIN MARIETTA shall not relieve the CONTRACTOR from any provisions of this Contract respecting such structure, other than to the extent specified in the preceding sentence, nor constitute a final acceptance of such structure.

45. WARRANTY AND CORRECTION OF DEFECTS

(a) In addition to any other warranties in this Contract, the CONTRACTOR warrants, except as provided in paragraph (h) of this clause, that work performed under this Contract conforms to the Contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the CONTRACTOR or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of one (1) year from the date of final acceptance of the entire work.

(c) The CONTRACTOR shall remedy at the CONTRACTOR's expense, any failure to conform or any defect. In addition, the CONTRACTOR shall remedy, at the CONTRACTOR's expense, any damage to MARTIN MARIETTA-owned or controlled real or personal property, when that damage is the result of:

- (1) The CONTRACTOR's failure to conform to Contract requirements; or
- (2) Any defect of equipment, material, workmanship, or design furnished.

(d) The CONTRACTOR shall restore any work damaged in fulfilling the terms and conditions of this clause. The CONTRACTOR's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.

(e) MARTIN MARIETTA shall notify the CONTRACTOR, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the CONTRACTOR fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, MARTIN MARIETTA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the CONTRACTOR's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this Contract, the CONTRACTOR shall:

- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of MARTIN MARIETTA;
- (3) Enforce all warranties for the benefit of MARTIN MARIETTA.

(h) All subcontractor warranties shall inure to the benefit of MARTIN MARIETTA and its assigns.

(i) This warranty shall not limit MARTIN MARIETTA's rights under the Inspection and Acceptance clause of this Contract with respect to latent defects, gross mistakes, or fraud.