

ALTERATION OF PLANS OR OF CHARACTER OF WORK.

(REV 8-1-00) (1-01)

SUBARTICLE 4-3.1 (of the Supplemental Specifications) is deleted and the following substituted:

4-3.1 General: The Engineer reserves the right to make, at any time prior to or during the progress of the work, alterations or changes, whether a significant change or not, and such alterations in the details of construction, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such alterations or changes shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered or changed, the same as if it had been a part of the original Contract.

The term “significant change” applies only when the Engineer determines that the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction. The allowance due to the Contractor will be in accordance with 4-3.2, below.

In the instance of an alleged “significant change”, the determination by the Engineer shall be conclusive and shall not be subject to challenge by the Contractor in any forum, except upon the Contractor establishing by clear and convincing proof that the determination by the Engineer was without any reasonable and good-faith basis.

SUBARTICLE 4-3.4 (of the Supplemental Specifications). The first paragraph is deleted and the following substituted:

4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment: A Supplemental Agreement or Unilateral Payment will be used to clarify the plans and specifications of the Contract; to provide for unforeseen work, grade changes, or alterations in plans which could not reasonably have been contemplated or foreseen in the original plans and specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.

SUBARTICLE 4-3.9.4 (of the Supplemental Specifications) is deleted and the following substituted:

4-3.9.4 Processing Procedures: Submit two copies of each VECP to the Engineer or his duly authorized representative. The Department will process VECPs expeditiously; however, the Department is not liable for any delay in acting upon a VECP submitted pursuant to this Subarticle. The Contractor may withdraw, in whole or in part, a VECP not accepted by the Department within the period specified in the VECP. The Department is not liable for any VECP development cost in the case where the Department rejects or the Contractor withdraws a VECP.

The Engineer is the sole judge of the acceptability of a VECP and of the estimated net savings in construction and collateral costs from the adoption of all or any part of such proposal.

Prior to approval, the Engineer may modify a VECP, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the VECP, the Department will determine the Contractor's fair share upon the basis of the VECP as modified. The Department will compute the net savings by subtracting the revised total cost affected by the VECP from the total cost as represented in the original Contract.

Prior to approval of the VECP that initiates the supplemental agreement, provide acceptable Contract-quality plan sheets revised to show all details consistent with the VECP design.