**24.09F BUILDER’S DAMAGES FOR OWNER’S BREACH OF** **CONSTRUCTION CONTRACT**

If you find in favor of the plaintiff, you must then decide how much money, if any, would fairly compensate the plaintiff for the defendant's failure to keep [his her its] promise.

Alternative A

To do this, you must first determine the amount of money that the defendant promised to pay the plaintiff. From this amount you must subtract the amount, if any, that the defendant has already paid. The amount that remains is the amount you should award as damages.

Alternative B

To do this, you must first determine the amount of money that the defendant promised to pay the plaintiff. From this amount you must subtract: (1) the amount, if any, that the defendant has already paid the plaintiff; and (2) the reasonable cost of completing the [insert subject matter of the contract] as promised. The amount that remains after subtracting (1) and (2) is the amount you should award as damages.

**Use Note**

These instructions cover the circumstance where the owner/defendant fails to pay despite the builder/plaintiff's performance. Alternative A should be used if the plaintiff has completely performed in compliance with the contract. Alternative B should be used if the plaintiff claims that the owner's breach is "material" and "total" and relieves the plaintiff of its duty of performance. *See, e.g., Conam Alaska v. Bell Lavalin Inc*., 842 P.2d 148, 158 (Alaska 1992).

**Comment**

A contractor need not prove damages with mathematical precision; it may only recover those damages which it proves with reasonable certainty. *State v. Northwestern Constr*., 741 P.2d 235, 237 (Alaska 1987). Damages for the increased cost of performance are limited to those proximately caused by the breach of contract. *Fairbanks N. Star Borough v. Kandik Constr*. *Inc*., 795 P.2d 793, 799 (Alaska 1990) (rejecting total cost approach).

For workwithin the scope of the original contract, the contractor's remedy is limited to the contract price. *Kandik Constr.*, 795 P.2d 799‑800. Claims for quantum meruit (which are not covered by this instruction) are allowable only for work performed beyond that contemplated by the original contract, and that was not discovered nor reasonably anticipated by the contractor before entering into the contract. *Id.*; *see also Southeast Alaska Constr. v. State*, 791 P.2d 339 (Alaska 1990) (affirming award on summary judgment for damages calculated on a total cost basis).