

# GENERAL PROVISIONS

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## SECTION 1 – TERMS AND DEFINITIONS

### **1.01 Terms**

Unless otherwise stated, the words directed, required, permitted, ordered, instructed, designated, considered necessary, prescribed, approved, acceptable, satisfactory, or words of like meaning, refer to actions, expressions, and prerogatives of the Engineer.

### **1.02 Definitions**

Except as amended or supplemented, whenever in the Contract Documents the following terms are used, the intent and meaning shall be interpreted as follows:

ASTM – American Society for Testing and Materials specifications.

AWWA – American Water Works Association and its Standard Specifications.

Addenda – Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the bidding documents or the Contract Documents.

Bid – The offer or proposal of the bidder submitted on the prescribed forms setting forth the prices for the work to be performed.

Bid Forms – Includes the Bid Schedule, Designation of Subcontractors, Bidders Statement of Responsibility, Bidder's Non-Collusion Affidavit, Bid Security, and all other information requested by the Bid Proposal Documents.

Bidder – Any individual, firm, partnership, corporation, or other legal entity submitting a bid for the work, acting directly or through a duly authorized representative. After the City awards the Contract, the term "Bidder" shall be equivalent to the term "Contractor" for the purpose of identifying the Contractor's rights and obligations under the Contract Documents.

Bidding Documents – The Notice Inviting Bids, Instruction to Bidders, Bid Proposal forms and Bidders Bond.

Bonds – Bid, performance, labor and material, and warrantee bonds and other instruments of security.

Calendar Day – A 24-hour period beginning at 12:00 AM and ending at 11:59 PM.

Change Order – A document recommended by the Engineer which is signed by the Contractor and City authorizing an addition, deletion or revision in the work, with possible adjustment in the contract price or the contract time, issued on or after the effective date of the Agreement.

City – City of East Palo Alto, California, as City, a political subdivision of the State of California, acting through the City Council as the Governing Body or duly authorized agents.

City's Representative – The Director of Public Works or the Director's authorized representative, acting on behalf of the City, designated by the City to act as its agent on specified matters relating to this contract.

City Regulations – All written laws, rules, and policies established by the City, including those set forth in the General Plan, East Palo Alto Municipal Code, ordinances, resolutions, policies, procedures, and City Design Documents (including the Standard Plan, Standard Specifications, Design Standards, and relevant Public Facility Master Plans).

Code – The terms Government Code, Labor Code, etc., refer to codes of the State of California.

Completion – The point at which work has been completed in accordance with the contract plans and specifications to the satisfaction of the Engineer and there are no items of work remaining to be completed. See General Provisions, Section 7.19, “Project Completion and Closeout”.

Consulting Engineer/Architect – One of several consulting firms or their designated representatives having a contractual relationship with the City to perform certain duties.

Contract – The entire written agreement covering the performance of the work as more fully described in Section 3.05: “Contract Documents and Precedence”.

Contract Time – Number of days, calendar or working, stated in the contract as the duration for the completion of the various parts of the Work (defined as Milestones) and the whole of the Work.

Contract Unit Price – The Contractor’s original bid for a single unit of an item of work in the bid.

Contractor – An individual, partnership, corporation or other legal entity entering into a contract with the City to perform the work. After the City awards the Contract, the term “Contractor” shall be equivalent to the term “Bidder” for the purpose of identifying the Contractor’s rights and obligations under the Contract Documents.

Council – The City Council of the City of East Palo Alto.

Days – Days shall mean calendar days unless otherwise specified.

Defective Work – Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of the Engineer, or requirements of any inspection, reference standard, test, or approval specified in the Contract Documents, or has been damaged prior to the Engineer’s recommendation of final acceptance.

Directive – Any written instruction to the Contractor pertaining to the completion of a project objective including, but not limited to Field Orders, responses to Requests for Information, Clarifications and the Notice to Proceed.

Engineer – The City Engineer or his/her designee.

Final Acceptance – Determination by the Director of Public Works that the entire contract has been completed in all respects in accordance with the Contract Documents and any modifications previously approved, evidenced by a Certificate of Final Acceptance signed by the Director of Public Works.

Float – The number of days between early and late completion. The float will be assigned to the project and will be available to both the City and the Contractor as needed to complete the work in accordance with the agreement.

Greenbook – The Standard Specifications promulgated by Public Works Standards, Inc., entitled “Standard Specifications for Public Works Construction” (SSPWC), and current editions.

Laboratory – The laboratory approved by the Engineer to test materials and work involved in the contract.

Liquidated Damages – The amount prescribed in the contract documents to be paid to the City or to be deducted from any payments due or to become due to the Contractor for each contract day’s delay in completing the whole of the Work and/or any of the Milestones.

Losses – Any and all losses, costs, liabilities, claims, damages, and expenses, including reasonable attorneys’ fees and expenses.

Milestone – An event specified in the Contract Documents relating to an intermediate completion date or time prior to completion of all the work.

Notice of Intent to Award – Indicates the intent of the City to present a contract to Council for award at the council meeting indicated.

Notice to Proceed – A written notice by the City to the Contractor authorizing the start of work and fixing the date on which the contract time will start.

Owner – The City of East Palo Alto.

Plans – The contract drawings approved by the Engineer which show the location, character, dimensions and details of the work.

Project – The work performed under the Contract Documents.

Punchlist – A list generated by the City or the City's Representative of any work to be completed or corrected by the Contractor before the contract work will be recommended for acceptance by the Director of Public Works.

Record Documents - Contract drawings, Contractor shop drawings, and equipment manuals revised by the Contractor to reflect actual installation where it deviates from the original document, or to show features constructed or found that do not show on the original document.

Reference Specifications – Those standards, rules, method of tests or analysis, codes, and specifications of other agencies, engineering societies, or industrial associations referred to in the Contract Documents. These refer to the current edition or amendments in effect at the time of advertising the project unless specifically referred to by edition, volume or date.

Revocable Bid Items – Bid items noted as "revocable items" may be deleted entirely or in part from the Work at the option of the City. The provisions in Section 4.07(b) and 4.07(c), "Unit Price Adjustments", shall not apply to such deletion, and no compensation will be allowed the Contractor by reason of such deletion.

Shop Drawings – All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate some portion of the work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the work.

Special Provisions – Any provisions which supplement or modify these General Provisions.

Specifications – General Provisions, Special Provisions, Technical Specifications and Standard Specifications incorporated by reference.

Standard Details – The City of East Palo Alto Standard Details for Public Works Construction, 2006 Edition and subsequent updates.

Standard Specifications – The City of East Palo Alto Standard Specifications for Public Works Construction, current edition.

State – State of California.

State Standard Plans – The Standard Plans of the Department of Transportation of the State of California (Caltrans), entitled "Standard Plans", current edition.

State Standard Specifications – The Standard Specifications of the Department of Transportation of the State of California (Caltrans), entitled "Standard Specifications", current edition. **Also, Revised Standard Specifications.**

Subcontractor – Any individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the work at the site.

Submittal – Any document or material required to be submitted to the City for the City's review or information.

Substantial Completion – When the work (or a specified part thereof) has progressed to the point where it is sufficiently complete and in accordance with the Contract Documents.

Surety – Any individual, firm or corporation, bound with and for the Contractor for the acceptable performance and completion of the work, and the satisfaction of all obligations incurred.

Surveyor – A land surveyor licensed in the State of California.

Work – The construction services required by the Contract Documents.

Working Day – Any day except Saturday, Sunday or Holidays observed by the City.

## **SECTION 2 – Bid REQUIREMENTS AND CONDITIONS**

### **2.01 General**

Bidders may obtain complete sets of the Contract Documents, including the bid forms to be used for bidding, at the location designated in the Notice to Bidders. Bidders shall use complete sets of Contract Documents in the preparation of bids. The City makes copies of the Contract Documents available, on the above terms, for the sole purpose of obtaining Bids for the work and does not confer a license or grant permission for any other use of the Contract Documents.

### **2.02 Bid Prices to Cover Entire Work**

The quantities listed in the Bid Schedule do not govern final payment, as payments to the Contractor will only be made for the actual quantities constructed in accordance with the plans and specifications as measured by the appropriate unit of measurement indicated in the Bid Schedule, complete in place to the satisfaction of the Engineer. Such payment shall constitute the full compensation for furnishing all materials, labor, tools and equipment for performing the work, and for all other incidentals necessary to complete the work as shown on the plans and described in these specifications.

No separate payment will be made for incidentals or any items delineated on the plans or called for in the specifications to be supplied or installed which are not specifically listed as bid items but are required to complete the project. Full compensation for such items shall be considered as included in the prices paid for the various contract items of work involved and no additional compensation will be allowed.

### **2.03 Listing of Proposed Subcontractors**

The Bidder shall not list any Subcontractor who is ineligible pursuant to Labor Code, Sections 1777.1 and 1777.7, and Public Contract Code, Section 6109.

If, after the execution of the Agreement, the successful Bidder subcontracts except as provided for in the Subcontracting Act, or if the Bidder lists in his bid another Contractor who will in turn sublet portions constituting the majority of work covered by the prime contract, the Contractor shall be subject to the penalties set forth in the Subcontracting Act. If the Contractor violates any provisions of the Subcontracting Act, the Contractor violates the Agreement and the City may either terminate the Agreement or assess a penalty to the Contractor in accordance with the terms of the Subcontracting Act.

### **2.04 Proposal Guarantee**

In accordance with the Public Contract Code, Section 20170, each Bid shall be accompanied by a Bid Security, in the amount of ten percent (10%) of the Bid Amount.

### **2.05 Withdrawal of Bids**

After the time fixed in the Notice to Bidders for the opening of bids, no bid may be withdrawn for a period of at least ninety (90) calendar days without consent of the awarding authority that the Bidder has established all of the following occurrences identified in California Public Contract Code, Section 5103.

### **2.06 Rejection of Bids**

More than one proposal from an individual, firm, partnership, corporation, or combination thereof under the same or different names will not be considered. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested in more than one proposal for the work contemplated may cause the rejection of all proposals in which that individual, firm, partnership, corporation or combination thereof is interested. If there is reason for believing that collusion exists among the bidders, any or all proposals may be rejected.

## **SECTION 3 – SCOPE AND CONTROL OF WORK**

### **3.01 Work to be Done**

It is the intent of this contract to obtain a finished, workmanlike job, complete and in place, with all equipment properly installed and operating. The work to be done consists of furnishing all labor, materials, tools, equipment and services necessary to complete the project, as further described in these Specifications, and as necessary to leave the site in a neat and finished condition with all equipment properly installed and working.

While the City has endeavored to accurately represent in the plans and specifications the physical conditions which may affect the cost of the proposed work, the City does not warrant the completeness or accuracy of such information. It is the Contractor's responsibility to ascertain the existence of any such conditions affecting the cost of the work, which would have been disclosed by reasonable examination of the site.

Conclusions pertaining to any test, investigation, statement or estimate of fact incorporated in the plans and specifications shall be considered by the Contractor to be a recommendation only. The Contractor may request equal access to the underlying or background information to arrive at his own opinion thereon, including his determination of how reliable might be any conclusion appearing in (or inferred from) the information. The Contractor may not rely upon "record drawings" or similar final or accepted drawings or maps constructed on public or private property. Such information may be used for reference only. Actual locations and depths shall be determined by field investigations by the Contractor.

No oral or telephonic agreement or conversation with any officer, agent, or employee of the City or the Engineer, either before or after execution of the contract, shall affect or modify any of the terms or obligations contained in any of the contract documents.

### **3.02 Plans and Specifications**

It is the intent of the Plans and Specifications to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. For convenience, the Specifications are arranged in several sections, but such separation shall not be considered as the limits of the work required by any separate trade. The terms and conditions of such limitations are wholly between the Contractor and his subcontractors. In general, the Special Provisions, General Provisions, and other sections of the specifications indicate the responsibilities of the Contractor and the quality of material and methods of workmanship. The plans indicate dimensions, quantities, positions, and various other details of construction.

Any work, materials or equipment that may be reasonably inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not specifically called for. When words, which have a well-known technical or trade meaning, are used to describe the work, materials or equipment, such words shall be interpreted in accordance with that meaning.

### **3.03 References to Standards and Codes**

Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of the opening of bids except as may be otherwise specifically stated.

### **3.04 Authority of the Engineer**

The City has the final authority in all matters affecting the work. Within the scope of the Agreement, the Engineer has the authority to enforce compliance with the Plans and Specifications and the Contractor shall promptly comply with instructions from the Engineer. The decision of the Engineer is final and binding on all questions relating to quantities; acceptability of materials furnished and work performed; equipment; work execution, rate of progress or sequence of work; and interpretation of the Plans,

Specifications, or other drawings. This shall be precedent to any payment under the Agreement, unless otherwise ordered by the City.

### **3.05 Contract Documents and Precedence**

The Contract Documents consist of the documents listed below, in order of precedence. If there is a conflict between component parts of the Contract Documents, the document highest in precedence controls.

- a. Change Orders.
- b. Directives.
- c. Permits in the following order: those issued by other agencies, those issued by the City.
- d. Project Specifications, in the following order – Supplemental Agreements, Addenda, General Construction Contract, Instructions to Bidders, Notice Inviting Bids, Special Provisions, General Provisions and Technical Specifications.
- e. Project Plans and Drawings. Figure dimensions on drawings shall govern over scale dimensions. Details shall govern over general arrangements.
- f. County of San Mateo Standard Specifications.
- g. County of San Mateo Standard Plans and Details.

All of the individual components of the Contract Documents are intended to be complementary and what is required by one shall be binding as if required by all. Interpretation of a disputed meaning or intent of the plans and specifications shall be made initially by the Engineer in accordance with the application of the order of precedence. Any final decision required regarding precedence and the clarification of discrepancies in the Contract Documents shall be made by the Engineer.

### **3.06 Record Documents**

The Contractor shall keep at the worksite a record copy of all Drawings, Specifications, Addenda, Change Orders, Work Directives, Field Orders and written interpretations and clarifications. These record documents together with all approved submittals, samples and shop drawings will be available to the Engineer as a reference at all times.

### **3.07 Record Drawings**

- a. The Contractor shall maintain a "job site" print of contract drawings and favorably reviewed shop drawings and "design/build" design drawings on the construction site at all times. These "job site" drawings are to be marked up daily with red ink or pencil to record:
  1. where actual installation differs from that shown on the original drawings,
  2. where underground or concealed features are uncovered during the work, whether unforeseen or not,
  3. field changes or deletions to the work,
  4. additional work, whether by Contract Change Order or not.

Underground features and features that are concealed during construction, or work that is added or changed, shall be recorded by both scaling and dimensioning. Elevation shall be recorded accurately to 0.1' and plan dimensions to 0.25'.

Maintaining "job site" record drawings up to date on a daily basis will be subject to specific inspection by the City. Progress payment requests will not be processed unless appropriately certified as to the currency of record drawing updating.

Each "job site" record drawing print shall be stamped "Contractor's Record Drawing" and signed and dated by the Contractor's Representative.

When a portion of the work is "design/build," the Contractor shall transfer all changes to the original (or a reproducible) of the design drawings. Drafting standards shall be in accordance with currently acceptable engineering standards, and they shall be clearly marked "RECORD DRAWINGS".

- b. Record Drawings Submittal - Organize record drawing sheets into a manageable set, bind with durable paper cover sheets, and print suitable titles, dates and other identification on the cover. Upon completion of work, submit the "job site" record drawings for City's review.

### **3.08 Reuse of Documents**

Neither the Contractor nor any Subcontractor or supplier or other person or organization performing or furnishing any of the work under a direct or indirect agreement with the City shall have any title or rights to any of the Drawings, Specifications or other documents (or copies thereof) which bear the seal of the design engineer. Such documents shall not be reused on extensions of the project or for any other project without written consent of the City and the design engineer.

### **3.09 Subsurface Data**

All soil and soil test data, water table elevations, and soil analyses included or referred to in the Contract Documents apply only at the location of the test holes and to the depths indicated. Soil test reports for test holes which have been drilled are available for inspection at the office of the Engineer. Any additional subsurface exploration shall be done by the Contractor at their own expense.

The elevation of the water table indicated by soil test reports is that which existed on the date the test hole was drilled. It is the Contractor's responsibility to determine and allow for the possibility of differing ground water elevations on the date of the project's construction. A difference in elevation between ground water shown in soil boring logs and ground water actually encountered during construction will not be considered as a basis for extra work.

### **3.10 Right-of-Way**

Acquisition of right-of-way or permanent easements necessary for the improvements as shown on the plans will be provided by the City. Unless otherwise provided, the Contractor shall make his own arrangements, pay for, and assume all responsibility for acquiring, using, and disposing of additional work areas, easements, and temporary facilities required. Contractor shall identify and hold the City harmless from all claims for damages resulting from such actions.

### **3.11 Removal of Defective Work**

The Contractor's Quality Control Manager shall be responsible for certifying that all materials and all work is installed in accordance with the Contract Documents. The Contractor's Quality Control Manager must inspect all work for compliance with the project documents and shall review and sign all test results. Additionally, the Contractor's Quality Control Manager shall notify the Owner of any non-compliant work within 24 hours, plus provide a proposal for corrective measures within 48 hours. As part of the monthly progress pay applications, the Contractor's Quality Control Manager shall also sign certification that all work included in the progress pay application is in compliance with the contract documents.

Any work which does not conform to the requirements of these specifications shall be considered as defective, and all such work or materials, whether in place or not, shall be rejected by the Owner and, unless otherwise permitted by the Owner, shall be rectified/removed immediately from the site of the work. Rejected work shall be rectified/replaced by the Contractor at the Contractor's expense. No rejected work, the defects of which have been subsequently corrected, shall be used until accepted in writing by the Owner.

### **3.12 Acceptance of Defective Work**

The City shall have the option, at its sole discretion and by notice to the Contractor, to accept defective work instead of requiring its removal or correction, in which case the contract sum shall be reduced by an amount equal to the difference between the value to the City such work would have were it complete, correct, and in conformity with the Contract Documents and the value to the City of such defective work. Such option shall be exercised solely by notice to the Contractor and shall not be implied from any act or omission by the City or the Engineer. If the remaining payments and retention are insufficient to cover the amount of the reduction of the contract sum, the Contractor shall promptly pay to the City the amount of any such deficiency.

### **3.13 Submittals**

Within ten (10) working days following the Notice to Proceed, the Contractor shall provide a detailed list of all individual submittals required to be submitted under the contract. The list shall reference the specification section and paragraph that requires the submittal along with the date the Contractor plans to transmit the submittal to the City for review.

Unless otherwise requested by the Engineer, submittals shall be provided electronically in .pdf format at least 28 calendar days prior to the approval being necessary for the work. Submittals shall be transmitted via e-Builder submittal module. Large submittals consisting of reports, oversized or colored pages, full sized shop drawings, manuals contained in binders, or submittals in other forms not easily reproduced shall be provided in hard copy format.

When requested by the Engineer, Contractor shall provide hard copy submittals for items included in the Special Provisions.

For items requiring shop drawings, no materials shall be furnished, and no work shall be performed, until the drawings have been favorably reviewed. Shop drawings shall be of a size and scale to clearly show all necessary details.

After review by the City of each of the Contractor's submittals, submittals will be marked with actions defined as follows:

- a. NO EXCEPTIONS TAKEN – Accepted subject to its compatibility with future submissions and additional partial submissions for portions of the work not covered in this submission. Does not constitute acceptance of deletion of specified or required items not shown in a partial submission.
- b. MAKE CORRECTIONS NOTED – The same as item (a), except that minor corrections as noted by the City shall be made by the Contractor. No resubmission is required.
- c. AMEND AND RESUBMIT – Rejected because of major inconsistencies or errors which shall be resolved or corrected by the Contractor prior to subsequent review by the City.
- d. REJECTED – Submitted material does not conform to plans and Specifications in major respects. This material is not expected to be resubmitted.
- e. ACCEPTED FOR RECORD – Submittals not reviewed by the City but accepted for record purposes.
- f. All submittals (shop drawings and supporting data, catalogs, schedules, etc.), shall be submitted as the instruments of the Contractor, who shall be responsible for their accuracy and completeness. These submittals may be prepared by the Contractor, subcontractors, or suppliers, but the Contractor shall ascertain that submittals meet all of the requirements of the Contract Documents, while conforming to structural, space, and access conditions at the point of installation. The Contractor shall check all submittals before submitting them to the City.
- g. By submitting the bid, the Contractor agrees that the City has no duty to the Contractor or any of its subcontractors or suppliers for the accuracy, completeness, or sufficiency of the City's review of submittals. The Contractor further agrees to incorporate this requirement in all of its subcontracts or purchase agreements.
- h. Each submittal shall relate only to one item or groups of items logically related.
- i. Allow the number of days stated in the Special Provisions for the City's review of submittals and resubmittals. Note that there are some different requirements for Construction Schedule submittals. No extension of time will be allowed through failure of the Contractor to either transmit submittals sufficiently in advance of the work or on account of resubmittals.

- j. Incomplete submittals will not be accepted.
- k. If the City's review of a submittal requires cross reference to, or coordination with, another submittal not yet transmitted to the City for review, it will be returned to the Contractor for resubmittal at a more appropriate time.

Alternatively, and at the City's discretion, the City may elect to advise the Contractor that the submittal review will be deferred for review. In such circumstances the City's review time will correspondingly be increased so the effective review time allowed is not reduced.

- l. If the City's review of a submittal reveals that supplemental information is necessary to complete the review, it will be returned to the Contractor for augmentation and resubmittal.

Alternatively, and at the City's discretion the Contractor may be requested to provide supplemental information to enable a review to be completed, in which case the City's review time will correspondingly be increased so the effective review time allowed is not reduced.

- m. The City shall review schedules, shop drawings, etc., submitted by the Contractor only for general design conformance with the concept of the project and compliance with the information given in the Contract Documents. Acceptance by the City of any drawings, method of work, or any information regarding materials and equipment the Contractor proposes to furnish shall not relieve the Contractor of its responsibility for any errors therein and shall not be regarded as an assumption of risks or liability by the City, or any officer or employee thereof, and the Contractor shall have no claim under the Contract on account of the failure or partial failure or inefficiency or insufficiency of any plan or method of work or material and equipment so accepted. Such acceptance shall be considered to mean merely that the City has no objection to the Contractor using, upon its own full responsibility, the plan or method of work proposed, or furnishing the materials and equipment proposed.
- n. Submittals shall be reviewed as a complete package and will not be returned marked with more than one of the actions noted above. Any submittal that requires further review shall be resubmitted in its entirety until the full submittal has been favorably reviewed.
- o. The Contractor shall not proceed with the fabrication, delivery, construction or installation of items requiring a submittal without favorable review of the submittal by the City. No site construction shall commence without a favorable review of the Baseline Construction Schedule, and the Submittal List. Items (a) and (b) above (no resubmittal required) are considered "favorable review". Items (c) and (d) above (correction and resubmittal required) are considered "unfavorable review". Favorable review shall not relieve the Contractor of its obligation to meet safety requirements and all other requirements of Law, nor constitute a Contract Change Order.

Favorable review of the shop drawings by the Engineer is interpreted to mean that there is substantial and acceptable conformance with the contract plans, but details of design may not necessarily be checked for adequacy or accuracy. Such acceptance shall not relieve the Contractor from the responsibility for errors or omissions in the shop drawings or from deviations from the contract documents unless such errors, omissions, or deviations were specifically called to the attention of the Engineer in writing. The Contractor shall be responsible for the correctness of the shop drawings, for shop fits and field corrections, and for the results obtained by the use of such plans.

Neither review nor approval of Contractor's submittal shall relieve the Contractor of its obligations with respect to the performance under the contract.

### **3.14 Substitutions**

A request for substitution will be considered if received within 20 calendar days from the date of Award, or within 15 days from the date the Notice to Proceed is issued, whichever is the later. Within 10 calendar days of receipt of the request for substitution, the City may request additional information necessary for

evaluation. Within 21 calendar days from receipt of the request for substitution, or 14 calendar days from receipt of additional information, whichever is later, the City will respond to the request for substitution. If a decision on use of a substitute cannot be made within these time limits, the product specified shall be used.

Proposed requests by the Contractor for changes in products, materials, equipment, and methods of construction required under the Contract Documents after the award of contract are considered "requests for substitutions". For proposed "or equal" substitutions, attention is directed to Section 5.03, "Trade Names or Approved Equals" of these General Provisions. The following are not considered substitutions:

- a. Revisions to Contract Documents requested by the City.
- b. Specified options of products and construction methods included in Contract Documents.
- c. Compliance with governing regulations and orders issued by governing authorities.

Each request for substitution shall be prepared and presented to the City in accordance with the procedures for submittals, except that the following additional information shall be provided.

- a. An explanation of the advantages to the City for accepting the substitution.
- b. A comparison of significant qualities of the proposed substitution with those specified.
- c. A list of changes or modifications needed to other parts of the work and to construction performed by the City and separate Contractors that will be necessary to accommodate the proposed substitution.
- d. A statement indicating the substitution's effect on the Construction Schedule compared to the Construction Schedule without acceptance of the substitution. Indicate the effect of the proposed substitution on overall contract time.
- e. Cost information, including a proposal of the net change, if any, in the Contract Sum.
- f. Certification that the substitution is equal to or better in every respect to that required by Contract Documents, and that it will perform adequately in application indicated. Include Contractor's waiver of rights to additional payment or time extensions that may be necessary because of the substitution's failure to perform adequately.

The Contractor's substitution request will be considered by the City when the following conditions are satisfied, as determined by the City; otherwise, requests will be returned without action except to record noncompliance with these requirements:

- a. Extensive revisions to Contract Documents are not required.
- b. Proposed changes are in keeping with the general intent of Contract Documents.
- c. The request is timely, fully documented and properly submitted.
- d. The specified product or method of construction cannot be provided within the Contract Time. The request may not be considered if the product or method cannot be provided as a result of failure of the Contractor to pursue the work promptly or coordinate activities properly, unless the product proposed is at least equal or better.
- e. A substantial advantage is offered the City, in terms of cost, time, energy conservation or other considerations of merit, after deducting offsetting responsibilities the City may be required to bear. Additional responsibilities for the City may include additional compensation to the Consulting Engineer/Architect for redesign and evaluation services, increased cost of other

construction by the City or separate contractors, and similar considerations.

- f. The specified product or method of construction cannot receive necessary approval by a regulatory agency, and the requested substitution can be approved.
- g. The specified product or method of construction cannot be provided in a manner that is compatible with other materials, and where the Contractor certifies that the substitution will overcome the compatibility.
- h. The specified product or method of construction cannot be coordinated with other materials, and where the Contractor certifies that the proposed substitution can be coordinated.
- i. The specified product or method of construction cannot provide a warranty required by the Contract Documents and where the Contractor certifies that the proposed substitution can provide the required warranty.

The Contractor's submittal and City's acceptance of Shop Drawings, Product Data or Samples that do not comply with the Contract Documents does not constitute a valid request for substitution, nor does it constitute acceptance of a substitution.

The City will notify the Contractor of acceptance or rejection of the proposed substitution within the time limits stated in the Special Provisions. If a decision on use of a substitute cannot be made within these time limits the product specified shall be used.

No extension of time will be allowed through failure of the Contractor to either transmit requests for substitution sufficiently in advance of the work, or on account of processing time outside the time limits noted.

### **3.15 Survey**

The Contractor shall provide all survey required by an independent land surveyor licensed in the State of California.

### **3.16 Construction Staking Lines and Grades**

Unless otherwise stated in the Special Provisions, the Contractor shall provide, preserve, and replace if necessary, all of the necessary construction stakes required for the construction of the project. Grades for underground conduits will be set on the ground surface and shall then be transferred to the bottom of the trench by the Contractor.

Stakes or marks will be set by a California Licensed Surveyor or a California Registered Civil Engineer to establish the lines and grades required for the completion of the work as specified in the Contract Documents. It shall be the Contractor's responsibility to notify the Engineer of any discrepancies found between field grades and notes shown within the Contract Documents.

Contractor shall furnish horizontal control and cut sheets to the Engineer immediately upon the setting of construction or boundary markers. Upon completion, all work shall conform to the lines, elevations, and grades shown on the plans. All staking including staking notes and notations on survey stakes shall be in accordance with the Caltrans Staking Manual. All staking notes shall be provided within 24 hours after survey staking.

### **3.17 City's Construction Inspector's Work Hours**

The Contractor shall give the City one working day's notice before beginning work so the City's inspection of the work can be arranged. Regular working hours for City Construction Inspectors are between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding City holidays. If the Contractor works outside these times, the Contractor may be charged for additional inspection.

### **3.18 Inspection of the Work**

All work is subject to inspection and approval of the Engineer. Unless otherwise stated in the specifications, the City shall perform all required inspections. The Contractor shall notify the Engineer before noon of the working day before inspection is required. Unless otherwise authorized, work shall be done only in the presence of the Engineer. Any work done without proper inspection will be subject to rejection. The Engineer shall at all times have access to the work during its construction at shops and yards as well as the project site. The Contractor shall provide every reasonable facility for ascertaining that the materials and workmanship are in accordance with the Contract Documents. Inspection of the work shall not relieve the Contractor of the obligation to fulfill all conditions of the contract.

If a portion of the work is covered contrary to the Engineer's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by the Engineer, be uncovered for the Engineer's observation and be replaced at Contractor's expense without adjustment of the contract time or the contract sum.

If a portion of the work has been covered, which is not required by the Contract Documents to be observed or inspected prior to it being covered and which the Engineer has not specifically requested to observe prior to its being covered, the Engineer may request to see such work and it shall be uncovered and replaced by Contractor. If such work is in accordance with the Contract Documents, the costs of uncovering and replacing the work shall be added to the contract sum by change order; and if the uncovering and replacing of the work extends the contract time, an appropriate adjustment of the contract time shall be made by change order. If such work is not in accordance with the Contract Documents, the Contractor shall pay such costs and shall not be entitled to an adjustment of the contract time or the contract sum.

### **3.19 Special Inspections**

Unless otherwise indicated in the Contract Documents, all special inspections are required to be provided by an independent company, properly certified, coordinated and paid for by the Contractor.

### **3.20 Sampling and Testing**

All sampling and testing is to be performed **by the Contractor** in order to meet the standard expressly described in the specification and in the City's Quality Assurance Program. Unless otherwise stated in the Contract Documents, all required sampling and testing will be performed directly by an independent laboratory, coordinated and paid for by the Contractor. Contractor shall cooperate with the City in coordinating the necessary testing. The coordination of testing is the responsibility of Contractor. The coordination of testing shall be the responsibility of the contractor. The frequency and location of tests shall be as indicated in the Special Provisions and the Technical Specifications. All compaction test sites deeper than five (5') feet below grade shall be properly shored by the Contractor to protect testing personnel.

The cost for performing re-tests due to failures, or additional callouts if work is not ready to test, will be paid for by the Contractor. The City shall require retesting until all required tests are successfully passed.

## **SECTION 4 – CHANGES IN WORK**

### **4.01 Limited City Authority to Approve Change Orders**

The Contractor recognizes that the City is a public agency and that it can only act through its duly authorized agents. In this regard, the Contractor agrees that only written change orders, executed by the City, shall be valid.

### **4.02 Contractor Liability for Unapproved Change Orders**

Unless a valid change order is issued, all changes in the work performed by the Contractor shall be at the Contractor's own risk and shall not be entitled to any additional compensation. Furthermore, the Contractor may be required to make the work conform to the plans and specifications. No act or series of acts by the City during the course of the contract shall be deemed to constitute a waiver of the City's rights to rely upon this provision.

### **4.03 Non-Material Change Requests by the Contractor**

Changes in the plans and specifications requested in writing by the Contractor, which do not materially affect the work, and which are not detrimental to the work or to the interests of the City, may be granted to facilitate the work, when approved in writing by the Engineer. If such changes are granted, they shall be made at a reduction in cost or at no additional cost to the City. Nothing herein shall be construed as granting a right to the Contractor to demand acceptance of such changes or to increase the contract sum or contract time as a result of the proposed change.

### **4.04 Directives**

The Engineer may issue Directives in the form of Field Orders, Clarifications, responses to Requests for Information, or any other document which makes interpretations or clarifications to the Contract Documents. Directives shall be binding upon the Contractor, and the Contractor shall promptly carry out the requirements of such Directives.

### **4.05 Requests for Information, Inconsistencies and Changed Conditions**

Before undertaking each part of the work, the Contractor shall carefully study all pertinent figures shown in the Contract Documents and verify that all applicable field measurements are free of conflicts, errors, discrepancies, inconsistencies and omissions. If such conditions are discovered, the Contractor shall notify the Engineer by writing a Request for Information and await direction from the Engineer before proceeding.

The means of seeking this clarification shall be via e-Builder Request for Information process.

If the Contractor encounters a changed condition, as defined by one or more of the conditions below, the Contractor shall notify the Engineer by submitting a Request for Information before proceeding.

- a. Material differing from that represented in the Contract which the Contractor believes may be hazardous waste, as defined by Health and Safety Code, Section 25117 that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provision of existing law; and
- b. Subsurface or latent physical conditions at the site differing materially from those represented in the Contract Documents; and
- c. Unknown physical conditions at the site of any unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the work and of the character provided for in the Contract Documents.

No extension of Contract time shall be made by the City due to the Contractor's failure to provide a timely written notice of any inconsistency or changed condition requiring direction. The Engineer will respond to the Contractor's Request for Information, providing an interpretation, clarification or change order for an

appropriate adjustment in contract time and cost pursuant to General Provisions, Section 4.07, "Change Orders". Contractor shall wait for the Engineer's written response to a Request for Information before proceeding with any work.

The Contractor shall not be liable to the City for failure to report any conflict, error, or discrepancy in the Contract Documents, unless the Contractor had actual knowledge or could foresee such conditions as may be discovered by a reasonable examination of the work site or materials. If the Contractor performs any construction activity in which he knows or should know involves an error, inconsistency, ambiguity, or omission referred to in this Section, without notifying and obtaining the written consent of the Engineer, Contractor shall be responsible for the resultant costs, including, without limitation, the costs of correcting defective work. However, in an emergency affecting the safety of persons or property, the Contractor shall take all reasonably necessary precautions to prevent or minimize damage, injury, or loss.

#### **4.06 Extra Work**

New or unforeseen work may be classified as "Extra Work" when the Engineer determines that the work is not covered by contract unit prices, not stipulated in the scope of work, represents work that is substantially different from what the Contractor bid upon, or falls under the category of a changed condition. The General and Special Provisions shall apply to all of the work, including extra work authorized. Payment for extra work will be made on the basis of General Provisions, Section 4.07, "Change Orders".

The Contractor shall maintain records sufficient to distinguish the direct cost of extra work from the cost of other operations. The Engineer will compare his records with the Contractor's reports, to make the necessary adjustments and compile the costs associated with the extra work.

When extra work reports are agreed upon and signed by both parties, they shall become the basis of payment. When extra work is still under negotiation or has not been agreed upon, the Contractor shall keep daily detailed and accurate records itemizing each element of cost and shall provide certified payroll, invoices, and other substantiating records and documentation.

When extra work is to be paid on a force account basis, the labor, materials and equipment used in the performance of that work shall be paid in accordance with the following. To the total of the direct costs computed, there will be an added markup of 35% to the cost of labor, 15% to the cost of materials and 15% to the cost of equipment. These markups shall constitute full compensation for any and all overhead costs, profit, or other costs not specifically designated as a cost of labor, material or equipment. When subcontractors perform force account work, an additional 5% markup shall be added to the total cost of the extra work to reimburse the Contractor for additional administrative costs. No markup for any subcontractor beyond the first tier shall be paid.

During the performance of extra work by force account, and as a condition to the Contractor's right to an adjustment of the contract sum, the Contractor shall prepare daily reports itemizing all costs for labor, materials, and equipment rental. For labor costs, the reports shall include names, job classifications, hours worked and rates of pay. For equipment costs, the reports shall include size, type, identification number and hours of operation. All records and reports shall be submitted to the Engineer for approval on a daily basis. Reports shall be made on the City of East Palo Alto Daily Extra Work Report form.

#### **4.07 Change Orders**

At any time during the progress of the work, and without in any way rendering void the Contract, the City may order alterations, additions or deductions from the work by change order, without notice to sureties. When so ordered in writing, the Contractor shall proceed with work as directed by the change order.

The change order shall describe the change in the work, the adjustment of the contract sum (if any), and the adjustment of the contract time (if any). The Contractor shall not be entitled to any extension of time for the completion of the work by virtue of any change order unless the change order specifically affects the controlling operation and provides for this. If, after receiving a change order, the Contractor feels that they are entitled to an extension of time, the Contractor may, within five (5) working days file a written request for consideration by the Engineer.

The process of submitting a proposed change, a cost proposal, negotiating an agreed upon change order, or any failure to reach an agreement as to an adjustment in the contract sum or the contract time, shall not relieve the Contractor of their obligation to perform in accordance with the Contract Documents.

Change orders may be Unilateral Change Orders or Agreed Upon Change Orders. Upon the receipt of either form of change order, the Contractor shall proceed promptly and diligently with the extra work.

- a. *Unilateral Change Orders* – A Unilateral Change Order may be issued by the City without the Contractor's signature where the City determines that it is in the City's best interest to proceed with the work, and the change does not materially alter the character of the work. The Contractor shall be deemed to have accepted the terms of any Unilateral Change Order unless the Contractor submits a written protest with respect to the change order, no later than ten (10) working days following the Contractor's receipt of the change order. See General Provisions, Section 4.08, "Disputed Work".
- b. *Agreed Upon Change Orders* – Within five (5) working days after receiving a request from the City for a written proposal for an Agreed Upon Change Order, the Contractor shall provide the Engineer with a cost proposal in a form satisfactory to the Engineer, setting forth the Contractor's proposed adjustments to the contract sum and contract time for performing the extra work.

Compensation for Agreed Upon Change Orders shall be calculated based upon the bid item unit prices stated in the Bid Schedule and no additional markup for overhead or profit will be provided. If there are no unit prices for the extra work, the Contractor and the City may agree upon unit prices or lump sum prices, which shall be used to increase or decrease the contract sum. When extra work changes the scope of bid item work, payment can be made by paying an agreed upon unit price adjustment or lump sum price adjustment of compensation. In the absence of price agreement, the contract sum shall be adjusted by force account.

The City pays for change order work based on one or a combination of the following:

1. Bid item unit prices
2. Agreed upon unit prices
3. Agreed upon lump sum price
4. Force account
5. Adjustment of compensation

Changed Quantity Payment Adjustments:

- a. *Increases of More Than 25 Percent* – If the total bid item quantity exceeds 125 percent of the quantity shown on the Bid Item List and if no approved Change Order addresses payment for the quantity exceeding 125 percent, the Engineer may adjust the unit price for the excess quantity under the 2010 State Standard Specification, Section 9-1.04 (force account) or the following:
  1. The adjustment is the difference between the unit price and the unit cost of the total item pay quantity.
  2. In determining the unit cost, the Engineer excludes the item's fixed costs. You have recovered the fixed costs in the payment for 125 percent shown on the Bid Item List.
  3. After excluding fixed costs, the Engineer determines the item unit cost under the 2010 State Standard Specification, Section 9-1.04 (force account).
  4. If the payment for the number of units of a bid item in excess of 125 percent of the Bid Item List is less than \$5,000 at the unit price, the Engineer may not adjust the unit price unless you request it.
- b. *Decreases of More Than 25 Percent* – If the total item pay quantity is less than 75 percent of the quantity shown on the Bid Item List and if no approved Change Order addresses payment for the quantity less than 75 percent, you may request a unit price adjustment. The Engineer may adjust the unit price for the decreased quantity under the 2010 State Standard Specification, Section 9-

1.04 (force account) or the following:

1. The adjustment is the difference between the unit price and the unit cost of the total pay quantity.
2. In determining the unit cost, the Engineer includes the item's fixed costs.
3. After including fixed costs, the Engineer determines the item unit cost under the 2010 State Standard Specification, Section 9-1.04 (force account).
4. The City does not pay more than 75 percent of the item total in the Bid Item List.

c. Eliminated Items

1. If the Engineer eliminates an item, the City pays your costs incurred before the Engineer's elimination notification date.
2. If you order authorized material for an eliminated item before the notification date and the order cannot be canceled, either of the following occurs:
3. If the material is returnable to the vendor, the Engineer orders you to return the material and the Department pays your handling costs and vendor charges.
4. The City pays your cost for the material and its handling and becomes the material owner.
5. The Engineer determines the payment for the eliminated bid item under the 2010 State Standard Specification, Section 9-1.04 (force account).

Agreed Upon Price Adjustments – If there are no unit prices for proposed extra work, the Contractor and the City may agree upon unit prices or lump sum costs, by written change order, prior to commencing work. In the absence of any such agreement, the contract sum shall be adjusted by force account.

Force Account – When extra work is to be paid on a force account basis, the labor, materials and equipment used in the performance of that work shall be paid in accordance with the 2010 State Standard Specification, Section 9-1.04 (force account) and as provided for below. To the total of the direct costs computed, there will be an added markup of 35% to the cost of labor, 15% to the cost of materials and 15% to the cost of equipment. These markups shall constitute full compensation for any and all overhead costs, profit, or other costs not specifically designated as a cost of labor, material or equipment. When subcontractors perform force account work, an additional 5% markup shall be added to the total cost of the extra work to reimburse the Contractor for additional administrative costs. No markup for any subcontractor beyond the first tier shall be paid.

- a. *Labor* – Labor costs shall be based on the prevailing wage scale for each craft or type of work. Employer payments for payroll taxes and insurance, health and welfare, pension, vacation, and other direct labor costs shall be included and will be calculated as the Labor Surcharge stipulated in the State of California, Labor Surcharge and Equipment Rental Rates book.
- b. *Materials* – Materials cost shall be the cost of all materials purchased by the Contractor and used in the extra work and shall be the actual cost of such materials, including sales taxes, freight and delivery charges. The City reserves the right to approve materials to be furnished by the Contractor, sources of supply or, if necessary, to furnish the materials to the Contractor. No compensation will be paid to the Contractor for any material furnished by the City or for materials not used.
- c. *Equipment Rental* – The Contractor will be allowed the actual rental rate of equipment, prorated over the time the machinery or equipment is required. For Contractor owned equipment, this rate shall be as stipulated in the State of California, Labor Surcharge and Equipment Rental Rates book. In addition, the Contractor will be allowed reasonable move-in and move-out charges, if applicable. All equipment shall, in the opinion of the Engineer, be in good working order, good condition, and suitable for its purpose. Equipment or tools having a replacement value of \$200.00 or less, whether or not consumed by use, shall be considered small tools and no payment will be made therefore.

- d. *Other Services or Expenditures* – The City may authorize and approve payment for work performed by special forces or necessary services and expenditures other than labor, materials, and equipment rental.

During the performance of extra work by force account, and as a condition to the Contractor's right to an adjustment of the contract sum, the Contractor shall prepare daily reports itemizing all costs for labor, materials, and equipment rental. For labor costs, the reports shall include names, job classifications, hours worked and rates of pay. For equipment costs, the reports shall include size, type, identification number and hours of operation. All records and reports shall be submitted to the Engineer for approval on a daily basis. Reports shall be made on the City of East Palo Alto Daily Extra Work Report Form.

#### **4.08 Resolution of Disputes**

It is the intent of this Contract that disputes regarding the Contract be resolved promptly and fairly between the City and the Contractor. However, it is recognized that some disputes will require detailed investigation and review by one or both parties before a determination and resolution can be reached. For the protection of the rights of both the Contractor and the City, the following is required to initiate review, determination and resolution.

**4.08.1 Notice** - Contractor shall provide a written notice of disputed work to the Engineer's attention prior to the commencement of and sufficiently in advance of performing the disputed work to allow the Engineer initial review of the disputed work. The notice shall be submitted in accordance with General Provisions, Section 4.05, "Requests for Information, Inconsistencies and Changed Conditions". If the Contractor disagrees with the Engineer's decision, or in any case where the Contractor deems additional compensation or a time extension to the Contract time is due the Contractor for work or materials not covered in the Contract or which the Engineer has not recognized as extra work, the Contractor shall notify the Engineer, in writing, of its intention to dispute the Engineer's decision.

Timely notice of potential claim is of great importance to the Engineer and the City, and is not merely a formality. Such notice allows the City to consider preventative action, to monitor the Contractor's increased costs resulting from the situation, to marshal facts, and to plan its affairs. Such notice by the Contractor, and the fact that the Engineer has kept account of the work in question, shall not in any way be construed as proving the validity of the dispute.

Notice pertaining to decisions provided in General Provisions, Section 4.05, "Requests for Information, Inconsistencies and Changed Conditions", or such other determinations by the Engineer shall be filed in writing to the Engineer within ten (10) days of receipt of such decision and prior to the commencement of such work. Written notice shall be clearly titled "Notice of Potential Claim" and shall be numbered starting with Number 1.

Such notice of potential claim must be stated with specificity, including identification of the event giving rise to potential claim, the date of the event, and the asserted effect on contract sum and contract time. The notice of potential claim shall include adequate supporting data. Adequate supporting data for a potential claim for an adjustment of the contract time shall include scheduling data demonstrating the impact of the event on the completion of the work. Adequate supporting data for a potential claim for an adjustment of the contract sum shall include a detailed cost breakdown of the items allowed, isolating labor, material, and equipment costs, and providing detailed quantities and unit prices for changed work. If the exact amount of a potential claim is not ascertainable at the time such potential claim is made, the supporting data currently available shall be submitted. Supplemental data supporting the exact amount of the potential claim shall be submitted as soon as available.

In proceeding with a disputed portion of the Work, the Contractor shall keep accurate records of all costs, including a summary of the hours and classification of equipment and labor utilized on the disputed work, as well as a summary of any materials or any specialized services which are used. Such information shall be submitted to the Engineer daily, receipt of which shall not be construed as an authorization for or acceptance of the disputed work.

No claim for additional compensation or extension of time for a delay will be considered unless the provisions of General Provisions, Section 7.17, "Delays and Extensions of Time" are complied with. No claim filed after the date of final payment will be considered.

Unless notice is properly given, the Contractor shall not recover costs or any damages incurred by it because of the alleged extra work, changed work or other situation which had required notice been given, would have given rise to a right for additional compensation.

**4.08.2 Response by Engineer** - The Engineer shall review the "Notice of Potential Claim" and within ten (10) days of receipt of the notice shall respond to the Contractor in writing with its determination, or if it is necessary to extend this period, the Engineer shall notify the Contractor in writing as to when a decision will be provided.

**4.08.3 Appeals to the Assistant Director of Public Works/City Engineer** - In the event the Contractor disagrees with the Engineer's determination provided in accordance with Section 4.08.2, "Response by Engineer", the Contractor may, within ten (10) days of receipt of such determination, appeal the determination to the Assistant Director of Public Works/City Engineer for review. The Assistant Director of Public Works/City Engineer shall review the appeal and transmit the decision in writing to the Contractor within 30 days from the date of receipt of the appeal.

In the event the Contractor disagrees with the determination of the Assistant Director of Public Works/City Engineer, the Contractor shall notify the Engineer, in writing within ten (10) days of receipt of such determination, of its intention to file a claim in accordance with General Provisions, Section 4.09, "Resolution of Claims Under Public Contract Code Section 20101" and Section 4.10. "Resolution of Claims under Public Contract Code Section 9204". Failure of the Contractor to appeal the determination of the Engineer within said ten (10) day period shall constitute a waiver of the Contractor's right to file a claim resulting from such determination or decision.

**4.08.4 Dispute Meetings** - From time to time the Contractor may request or the Engineer may call a special meeting to discuss outstanding disputes should it deem this a means of possible help in the resolution of the dispute. The Contractor shall cooperate and attend prepared to discuss its dispute and make available the personnel, subcontractors and suppliers necessary for resolution, and all documents which may reasonably be requested by the Engineer.

**4.08.5 Submission of Potential Claim Costs** - Potential claim costs must be submitted within thirty (30) days after the last cost of work for which the Contractor contends it is due additional compensation. But if costs are incurred over a span of more than thirty (30) days, then within fifteen (15) days after the thirtieth day and every month thereafter, the Contractor shall submit to the Engineer, as best the Contractor is able, its costs incurred for the claimed matter.

Potential claims shall be made in itemized detail and should the Engineer be dissatisfied with the format or detail of presentation, upon request for more or different information, the Contractor will promptly comply, to the satisfaction of the Engineer. If the additional costs are in any respect not knowable with certainty, they shall be estimated as best can be done. The Engineer shall have the right as provided in Section 4, "Changes in Work" to review the Contractor's records pertaining to a submitted claim. In case the claim is found to be just, it shall be allowed and paid for as provided in Section 4, "Changes in Work".

#### **4.09 Resolution of Claims Under Public Contract Code Section 20104**

Disputes pertaining to this Agreement for three hundred and seventy-five thousand dollars (\$375,000) or less which cannot be resolved between the parties pursuant to Section 4.08, "Resolution of Disputes", shall be resolved pursuant to the provisions of Public Contract Code commencing at Section 20104.

**4.09.1 Disputes for \$375,000 or Less** - Said Code sections provide in part that:  
Under the law (starting at Public Contract Code Section 20104.2) construction claims of \$375,000.00 or less on local public agency construction contracts must be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of

final payment.

The City must respond in writing to any written claim of three hundred seventy-five thousand dollars (\$375,000) or less within 60 days (or, in the case of claims of less than \$50,000, within 45 days) of receipt of claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the City may have against the claimant.

If additional information is thereafter required, it shall be requested and provided, pursuant to Public Contract Code Section 20104.2, upon mutual agreement of the City and the claimant. The City's written response to the claim, as further documented, shall be submitted to the claimant within 30 days (or, for claims of less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

If the claimant disputes the City's written response (or if the City fails to respond within the time periods prescribed above) the claimant may notify the City, in writing, within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the times prescribed, respectively, and demand an informal settlement conference. The City must then schedule a settlement conference within 30 days.

Following the settlement conference, if the claim or any portion remains in dispute, the claimant may file a claim as required by the claims statute commencing at California Government Code Section 910 and in accordance with the East Palo Alto Municipal Code. The time within which a Government Code claim must be filed is tolled from the time the claimant submits the Public Contract Code claim until the time when the claim is denied. Pursuant to East Palo Alto Municipal Code, the claim must be filed with the City Clerk.

4.09.2 Disputes Exceeding \$375,000 - Unless this Contract provides otherwise, all claims between the City and the Contractor that are not resolved between the parties and are not governed by Public Contract Code Section 20104 shall be resolved per the procedures established in Public Contract Code Section 9204 and per Section 4.10, "Resolution of Claims under Public Contract Code Section 9204" below.

4.09.3 Civil Action Proceedings - If a civil action is filed to resolve the claim, then between 30 and 60 days after the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by the parties. The parties are given 15 days to select a disinterested third person as mediator. Mediation must commence within 30 days of submittal and conclude within 15 days of commencement unless the time is extended for good cause by the court.

If the matter remains in dispute, the case must be submitted to judicial arbitration pursuant to procedures set forth in the Code of Civil Procedure commencing at Section 1141.10. Discovery is permitted consistent with the rules pertaining to judicial arbitration.

Arbitrators shall be experienced in construction law.

A party who appeals an arbitration award and does not obtain a more favorable judgment shall pay the attorney's fees on appeal of the other party. The City must pay interest at the legal rate on any arbitration award or judgment, commencing on the date when suit was filed. Except as otherwise provided in the Contract, the City must pay the undisputed portions of any claims.

Should either party to this Contract bring legal action against the other, the case shall be handled either by the Superior Court of the State of California in the County of Santa Clara, or the United States District Court, Northern District of California. The Agreement shall be construed and its performance enforced under California Law.

#### **4.10 Resolution of Claims under Public Contract Code Section 9204**

The provisions of this section are provided pursuant to Public Contract Code Section 9204. These provisions are applicable only until January 1, 2020 and then are repealed and not applicable to this Contract unless another State statute extends the date of these provisions.

**4.10.1 Claim Definition** - "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- a. A time extension, including, without limitation, for relief from damages or penalties for delay assessed by the City.
- b. Payment by the City of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
- c. Payment of an amount that is disputed by the City.

**4.10.2 Claim Process** - Upon receipt of a claim pursuant to this Section, the City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the City and Contractor may, by mutual agreement, extend the time period provided in this subsection.

The Contractor shall furnish reasonable documentation to support the claim.

If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. If the City fails to issue a written statement, provision of General Provisions, Section 4.10.3.1, "City's Failure to Respond", shall apply.

**4.10.3 Disputed Claims** - If the Contractor disputes the City's written response, or if the City fails to respond to a claim issued pursuant to this section within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

For purposes of this section, mediation includes any nonbinding process, including, but not limited to,

neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4.10.3.1 City's Failure to Respond - Failure by the City to respond to a claim from the Contractor within the time periods described in this subsection or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied because of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the Contractor.

4.10.3.2 Interest - Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

4.10.3.3 Subcontractor Claims - If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against the City because privity of contract does not exist, the Contractor may present to the City a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the City shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the subcontractor in writing as to whether the Contractor presented the claim to the City and, if the Contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

4.10.3.4 Waiver of Provisions - A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

## **SECTION 5 – CONTROL OF MATERIALS**

### **5.01 Materials and Workmanship**

All materials, parts and equipment furnished by the Contractor in the work shall be new, high grade, and free from defects. Workmanship shall be in accordance with generally accepted standards. Materials and workmanship shall be subject to the Engineer's approval.

Materials and workmanship not conforming to the requirements of these specifications shall be considered defective and will be subject to rejection. Defective work or material, whether in place or not, shall be removed immediately from the site by the Contractor, at the Contractor's expense, when so directed by the Engineer.

If the Contractor fails to replace any defective or damaged work or material after notice from the Engineer, the Engineer may cause such work or materials to be replaced. The replacement expense shall be deducted from the amount to be paid to the Contractor.

Used or secondhand materials, parts and equipment is permissible only if permitted by the Special Provisions.

Submittals for specialized material or equipment to be used in the work that is not readily available from material suppliers (such as electroliers, luminaries, signal poles, heads, cable, controllers, pumps, etc.) shall be submitted within five (5) working days after Notice to Proceed. Time extensions will not be granted for project delays due to the unavailability of such specialized material and equipment unless the Contractor furnishes the Engineer with documentation of purchase order dates, acceptable reason for delay of delivery, or proof of diligent efforts to obtain said items from alternate sources.

The Contractor shall provide the Engineer with periodic reports to inform the Engineer of any changes in the projected material or equipment delivery dates.

### **5.02 Protection of Work and Materials**

The Contractor shall provide and maintain storage facilities and employ such measures as will preserve the specified quality and fitness of materials to be used in the work. Stored materials shall be reasonably accessible for inspection. The Contractor shall also adequately protect new and existing work and equipment for the duration of the contract.

The Contractor shall not, without the City's consent, assign, sell, mortgage or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the contract.

### **5.03 Trade Names or Approved Equals**

Whenever any particular material, process, or equipment is indicated by patent, proprietary or brand name, or by name of a manufacturer, such wording is used for the purpose of facilitating its description and shall be deemed to be followed by the words "or approved equal". Because products specified may have a uniqueness that can't be matched, the Contractor must "bid" the work based upon the products specified. If, during the submittal process, an equivalent product is proposed by the contractor, the contractor must provide data to show that the product is considered equal. Contractor shall also identify any price differences, which shall be considered as part of the substitution and if accepted, shall result in an appropriate credit or cost to the City by change order should the substitution be made.

Wherever catalog numbers and specific brands of trade names followed by the designation "or approved equal" are used in conjunction with a designated material, product, item, or service mentioned in these specifications, they are used to establish the standards of quality and utility required. "Or approved equal" proposals will be subject to acceptance by the City.

Unless otherwise authorized by the Engineer, the proposed substitution must be submitted in sufficient time, before the normal use or installation of the material, process or equipment, for the Engineer to determine the equivalency and for the Contractor to make any required purchases (including delivery).

At the Contractor's expense, shall furnish data concerning items offered by the Contractor as equivalent to those specified. The Contractor shall have the material tested as required by the Engineer to determine that the quality, strength, physical, chemical, or other characteristics, including durability, finish, efficiency, dimensions, service, and suitability are such that the item will fulfill its intended function. Installation and use of a proposed item shall not occur until after approval by the Engineer.

Test methods shall be submitted for approval by the Engineer prior to the test being performed on an item proposed for substitution. Test results shall be reported promptly to the Engineer, who will evaluate the results and determine if the proposed item is equivalent. The Engineer shall determine whether the material offered is equivalent to that specified, and the Engineer's findings shall be final. If a substitute offered by the Contractor is found to be not equal to the specified material, the Contractor shall furnish and install the specified material.

The specified contract completion time shall not be affected by any circumstances developing from the provisions of this Section.

#### **5.04 Inspection of Materials by City**

Unless otherwise specified, inspection may be required at the source for such typical materials and fabricated items as bituminous paving mixtures, structural concrete, metal fabrication, metal casting, welding, concrete pipe manufacture, protective coating application, and similar shop or plant operations.

Standard items of equipment such as electric motors, conveyers, elevators, plumbing fixtures, etc., are subject to inspection at the job site. Special items of equipment such as designed electrical panel boards, large pumps, sewage plant equipment, etc., are subject to inspection at the source, normally only for performance testing. The Special Provisions may specify additional inspection requirements.

#### **5.05 Inspection of Materials by Others**

When the City does not elect to make its own inspection at the source, the Contractor shall, at its expense, engage an inspector or accredited testing laboratory to inspect the materials, equipment or process. The inspector or representative of the testing laboratory shall judge the materials by the requirements of the plans and specifications. No materials or equipment shall be shipped nor any processing, fabrication or treatment of such materials shall be done without a favorable inspection. These materials shall be subject to re-inspection at the jobsite.

#### **5.06 Certification**

The Engineer may waive material testing requirements of the Specifications and accept the manufacturer's written Certificate of Compliance or test data demonstrating that the materials to be supplied meet the requirements of the Specifications. A Certificate of Compliance is acceptable for authorizing the use of steel pipe in sizes less than 18 inches and vitrified clay, cast iron or ductile iron pipe in all sizes. The City may request any materials used on the basis of a Certificate of Compliance to be sampled or tested at any time. The fact that material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of the responsibility for incorporating materials in the work which conforms to the requirements of the Contract Documents. **The Certificate of Compliance shall be signed and dated by the manufacturer, state the lot number for which the Certificate applies, indicate the specifications which the materials comply with, state the quantity of material covered by the certificate, and clearly demonstrate that the materials certified are specifically to be used for this project. Unsigned, generic, or non-project specific certificates of compliances will not be accepted as a means of release. In addition, the Contractor's Quality Control Manager shall be responsible for reviewing the Certificates of Compliances to verify acceptability and conformance with these specifications prior to submitting to the City.**

### **5.07 Weighing and Metering Equipment**

All scales and metering equipment used for proportioning materials shall be inspected for accuracy and certified within the past 12 months by the State of California Bureau of Weights and Measures, by the County Director or Sealer of Weights and Measures, or by a scale mechanic registered with or licensed by the County.

The accuracy of the work by a scale service agency, except as stated herein, shall meet the standards of the California Business and Professions Code and the California Code of Regulations pertaining to weighing devices. A certificate of compliance shall be presented to the Engineer for approval prior to operation and shall be renewed whenever required by the Engineer at no cost to the City.

All scales shall be arranged so they may be read easily from the operator's platform or area. They shall indicate the true net weight without the application of any factor. The figures of the scales shall be clearly legible. Scales shall be accurate to within 1 percent when tested with the plant shut down. Weighing equipment shall be so insulated against vibration or moving of other operating equipment in the plant area such that the error in weighing with the entire plant running will not exceed 2 percent for any setting nor 1.5 percent for any batch.

### **5.08 Calibration of Testing Equipment**

Testing equipment, such as but not limited to, pressure gages, metering devices, hydraulic systems, force (load) measuring instruments, and strain-measuring devices shall be calibrated by a testing agency acceptable to the Engineer at intervals not to exceed 12 months, and following repairs, modification, or relocation of the equipment. Calibration certificates shall be provided when requested by the Engineer.

## **SECTION 6 – UTILITIES**

### **6.01 Contractor's Obligation to Identify and Protect Subsurface Infrastructure**

The Contractor shall locate and protect service laterals, conduits, and appurtenances of any underground facility, the presence of which could be reasonably inferred from the Contract Documents or from the presence of visible facilities such as buildings, meters, and junction boxes, prior to doing any work that may damage any such facilities, or interfere with their service. Where underground main distribution conduits, such as water, gas, sewer, electric power, telephone, or cable television are shown on the plans, the Contractor shall assume that every parcel will be served by a service connection for each type of utility. The Contractor shall comply with all requirements for the protection of underground infrastructure.

It shall be the Contractor's responsibility to complete all work in a manner that satisfies utility company standards, providing if requested, detailed plans prepared by a California Registered Civil Engineer showing necessary temporary support of utilities during coordinated construction work. The Contractor is directed to contact these agencies before submitting bids and to be familiar with their requirements.

The Contractor agrees to assume liability and to hold the City of East Palo Alto, its officers, and employees harmless from any damages resulting from the existence of underground utilities and structures not reported to the Engineer, not indicated on the public records examined, or located at variance with that reported or shown on records examined.

### **6.02 Location**

The City will search known records and indicate on the plans those utilities, except service connections, which may affect the work. All available information regarding removal, relocation, or disconnection of utilities, or installation of new utilities, will be furnished to prospective bidders before the receipt of bids. The Contractor shall immediately report to the Engineer those utilities omitted from the plans or found substantially at variance with the location shown.

Existing and proposed utilities and improvements are shown in their approximate locations. Locations may not have been field verified and no guarantee is made as to the accuracy and completeness of the information shown. The fact that any facility is not shown on the plans shall not relieve the Contractor of responsibility under this Section. It shall be the Contractor's responsibility to determine the existence and location of utilities shown on the plans, indicated by field locating services, or evidenced by facilities visible in the field. No additional compensation will be allowed for delays incurred as a result of the Contractor's failure to field verify and/or pothole existing utilities prior to beginning construction. Potholing shall be considered as part of the various contract bid items and no additional compensation will be allowed.

At least two (2) working days prior to commencing work, the Contractor shall request utility owners to mark or otherwise indicate the location of their substructures. Contractor shall contact Underground Service Alert (USA) at (800) 642-2444 and the Engineer at least 48 hours prior to excavation. The locations of utilities as shown on the plans are approximate and are not to be construed as certainty. It shall be the Contractor's responsibility to determine the true location and depth of all utilities and service connections affecting or conflicting with the work, prior to the performance of the work. As necessary, the Contractor shall pothole these utilities prior to working in the area to avoid damage to them. Potholing shall be considered as part of the contract bid items, and no separate payment will be made. Contractor shall familiarize himself with the type, material, age and condition of any utility which may be affected by the work.

### **6.03 Protection**

As necessary or as directed by the Engineer, the Contractor shall field adjust proposed improvements to avoid conflicts with existing improvements. The Contractor shall not interrupt the service function or disturb the supporting base of any utility, without authority from the utility owner or order from the City.

Where protection is required to ensure support of existing underground, overhead and at-grade utilities (including their associated structures and service connections) as shown on the plans, the Contractor shall furnish and place the necessary protection at Contractor's expense. In case of damage, the Contractor, without additional compensation, shall restore utilities to as good of a condition as they were found.

Upon learning of the existence and location of any utility omitted from or shown incorrectly on the plans, the Contractor shall notify the City and be fully responsible for protecting such utility. When authorized by the Engineer, additional protection may be paid by change order, for utilities other than a service connection.

The Contractor shall immediately notify the Engineer and the utility owner if the Contractor disturbs, disconnects or damages any utility. If the utility is located substantially as indicated on the plans, the Contractor shall bear the costs of repair or replacement.

When placing concrete around or contiguous to any utility, at the Contractor's expense, shall furnish and install a cushion of expansion joint material, clear opening, sleeve, or other suitable material approved by the Engineer so as to prevent embedment or bonding of the utility with the concrete.

#### **6.04 Shut Down Notification**

Contractor shall coordinate all shutdowns with the City's Public Works Department and follow all of their requirements for exercising and shutting off water valves on main lines. The Contractor shall have all materials required for the work at the job site prior to requesting a shut off.

Shut down of water or sewer services shall be done only after the Contractor has coordinated the shutdown with the Engineer and the property owners. When a water main, sewer main, or service lateral is to be shut down, the Contractor shall coordinate with and notify the Engineer in writing, at least seventy-two (72) hours in advance of the shutdown. Except for scheduled shutdowns and in cases of emergency, the Contractor shall notify all customers and effected parties of a shutdown at least forty-eight (48) hours in advance by writing and four (4) hours in advance by person to allow adequate draw time. Once shut down, the Contractor shall proceed with the work in an expedient manner until the water lines or sewer lines are back in service.

#### **6.05 Removal**

Unless otherwise specified, the Contractor shall remove all portions of interfering utilities shown on the plans as 'abandoned' or "to be abandoned in place". Before starting removal operations, the Contractor shall ascertain from the utility owner whether abandonment is complete. The costs involved in the removal and disposal of utilities to be abandoned shall be considered as part of the contract bid items, and no separate payment will be made.

#### **6.06 Relocation**

When feasible, the owners of utilities within the area affected by the work will complete their necessary installations, relocations, repairs, or replacements before commencement of work by the Contractor. When the Contract Documents or plans indicate that a utility is to be relocated, altered or constructed by others, the City will conduct all negotiations with the owners and the work will be done at no cost to the Contractor.

Utilities interfering with the permanent project work, discovered after the award of the contract, shall either be relocated, altered, or reconstructed by the utility owners, or the Engineer may order changes in the work to avoid interference. Such changes will be addressed in accordance with General Provisions, Section 4, "Changes in Work".

When the plans or Specifications provide for the Contractor to alter, relocate, or reconstruct a utility, all costs for such work shall be absorbed in the contract bid items. Temporary or permanent relocation or alteration of utilities by and for the Contractor's convenience shall be the Contractor's responsibility, and the Contractor shall make all arrangements, obtain all approvals, and bear all costs. The Contractor may,

agree with the owner of any utility to disconnect and reconnect interfering service connections for the Contractor's own convenience or to expedite the work. The City shall not be involved in any such agreement.

### **6.07 Delays**

The Contractor is responsible for notifying utility owners in time to prevent delays attributable to utility relocations or alterations as called for in the Contract Documents. The Contractor shall not be entitled to damages or additional payment if such delay does occur. The Engineer will determine the extent of the delay on the project as a whole, and any commensurate extension of time.

### **6.08 Cooperation**

When necessary, the Contractor shall conduct operations so as to permit access to the worksite and provide time for utility work to be accomplished during the progress of the contract work.

## **SECTION 7 – PROSECUTION AND PROGRESS**

### **7.01 Notice to Proceed**

Following contract execution, the City shall issue the Contractor a Notice to Proceed provided that the documents are acceptable to the City. Unless stated otherwise, the contract time shall commence upon the receipt date on the Notice to Proceed.

### **7.02 Commencement of Work**

Work shall commence within fifteen (15) calendar days following the receipt date on the Notice to Proceed and shall be diligently prosecuted to completion within the time provided in the Notice to Bidders.

### **7.03 Administrative Duties**

The Contractor shall coordinate the scheduling and timing of administrative duties with other activities to avoid conflicts and to ensure orderly project progress. Such activities include, but shall not be limited to, the preparation of construction schedules, preparation and processing of submittals, requests for information and responding to requests for quotations, attending and preparing for progress meetings and coordinating project closeout activities.

### **7.04 Construction Schedule**

The Contractor shall submit to the Engineer an acceptable Critical Path Method (CPM) progress schedule showing the critical path for completing the various items of work within the number of contract days specified. The schedule shall show the order in which the Contractor proposes to carry out the major items of work and the dates on which the Contractor will start and finish the various items (including procurement of materials and equipment). If requested, the schedule shall reflect person/crew hours and equipment loading for various construction activities in order for the City to better evaluate the proposed schedule.

The Contractor shall submit a schedule showing all work completed within the contract time. If the Contractor's schedule shows completion prior to the contract time this creates float at the end of the schedule, as a mutual resource. For example, the City will not charge liquidated damages in case the actual completion of work goes beyond the contractor's proposed completion date as long as the contract time is not exceeded. Similarly, the Contractor cannot charge any extended overhead or any additional costs if the Contractor's proposed completion date is not met for any reason as long as the completion is not delayed beyond the contract time. Contract time is the specified contract duration plus any additional days provided by contract change order.

A Preliminary Construction Schedule shall be submitted at least three (3) working days prior to the Preconstruction Conference. The Preconstruction Conference may be postponed if the Preliminary Construction Schedule is not received prior to the meeting. The Preliminary Construction Schedule shall be prepared in any time-scaled graphical form the Contractor chooses, and shall show or allow for the following;

1. The time scale shall be in days (not dates) and the work shall be shown as finishing on, or before, the number of days specified as the Contract Duration.
2. Specified Milestones shall be identified and shall conform to specification requirements.
3. Time for Contractor's preparation of and City's review of submittals, particularly in the early phases of the work, and for procurement activities.
4. Time for final inspection and completion of punchlist correction work at the end of the project.
5. The activities shall follow a logical progressive sequence to completion of the project.
6. The City will review the Preliminary Construction Schedule within the number of days stated in the Special Provisions, after receipt of the Preliminary Construction Schedule.

Within the number of days stated in the Special Provisions after receiving review comments of the Preliminary Construction Schedule, the Contractor shall submit the Baseline Construction Schedule. The

City will review the Baseline Construction Schedule within the number of days stated in the Special Provisions. No progress payments will be made until the Baseline Construction Schedule has been favorably reviewed by the City. No construction work shall commence at the site until the Baseline Construction Schedule has been favorably reviewed by the City.

With each monthly progress payment request, the Contractor shall submit an Updated Construction Schedule showing actual progress of activities to date, and the remaining activities to completion. Progress payment requests will not be actioned if not accompanied by an Updated Baseline Schedule. Upon acceptance, the Baseline Construction Schedule shall become the working construction schedule unless replaced by a Revised Construction Schedule.

If at any time the Updated Baseline Construction Schedule indicates that the completion date has fallen behind the current due date by more than either 30 days or 20% of the remaining duration, whichever is less, or the activity logic has become unfeasible for any reason, the Baseline Construction Schedule shall be revised by the Contractor. The Revised Construction Schedule shall incorporate any additional or changed work to date (identified by Contract Change Order number or Request for Quote number (but not both)) and any revised activity logic. Requirements for submittal of the Baseline Construction Schedule shall apply to the Revised Construction Schedule. Revised Construction Schedules shall be identified by sequential number and a revision date. Upon acceptance, the Revised Construction Schedule shall become the working construction schedule unless replaced by a subsequent Revised Construction Schedule. Updating of Revised Construction Schedules shall occur as specified for the Baseline Construction Schedule, including the criteria requiring further revisions.

#### **7.05 Three Week Look Ahead Schedule**

The Contractor is required to furnish to the Engineer, on a weekly basis at the project's weekly progress meetings, a 3-week look ahead schedule. The schedule must show planned activities in sufficient detail to allow proper monitoring of the planned construction activities.

#### **7.06 Construction Sequence**

When required by the Special Provisions or plans, the Contractor shall follow the sequence of operations as set forth therein. The Contractor shall prepare and submit at the pre-construction meeting a staging or phasing plan identifying the sequence of construction work and traffic control needed to complete the project. The staging plan shall be subject to review and approval by the Engineer, prior to the start of construction. The goal of the phasing plan will be to minimize impacts to surrounding businesses and residents in the project areas.

#### **7.07 Recording Existing Conditions**

Existing conditions throughout the project site shall be photographed and video recorded by the Contractor. Recordings of these pre-construction conditions shall be complete, comprehensive, and shall be submitted to the Engineer five (5) days before start of construction. Recording shall include and show every detail of existing improvements, including the current condition of the curb, gutter, sidewalk, signs, landscaping, streetlights, roadway, structures near the project including face of buildings, canopies, shades, fences, calabazas creek, pedestrian/bike trail, and any other features within the limits of work.

#### **7.08 Preconstruction Conference**

The City shall designate a date and time for the pre-construction conference once the contract has been fully executed. The meeting shall be attended by responsible representatives of the Contractor, including the designated Contractor's Representative and Job Superintendent. At the pre-construction conference, the City shall discuss various administrative procedures and project coordination issues. The City will provide one full size set of reproducible contract drawings, and one unbound set of project specifications and addenda to the Contractor at the Preconstruction Conference, or shortly thereafter. The Contractor shall be responsible for conforming the drawings and specifications to incorporate the addenda, and for printing sufficient copies of drawings and specifications for the use of the Contractor, subcontractors and suppliers.

At a minimum, the Contractor should be prepared to furnish and discuss the following:

1. Letter designating the Superintendent.
2. A list of key personnel and emergency contact information including telephone numbers to be used in case of emergency.
3. Preliminary schedule and project phasing plans, including lead time for submittal and fabrication of critical features.
4. Utility company coordination and/or permit issues.

### **7.09 Progress Meeting**

The Contractor's Project Manager, Job Superintendent and if requested by the City, Subcontractors shall attend weekly progress meetings to be scheduled by the Engineer at a time agreeable to both the Engineer and the Contractor. Contractor shall also attend special meetings in addition to regular progress meetings if necessary and directed by the Engineer.

### **7.10 Hours of Construction**

Construction activities shall be limited to the hours of 8:00 a.m. to 5:00 p.m., unless otherwise noted or further restricted in the Special Provisions, Contract Documents, or as directed by the Engineer. No work shall be done on weekends, holidays or outside these specified hours, unless otherwise approved by the Engineer. The Contractor shall take into consideration and coordinate time constraints for special events or activities organized by the City or other agencies. No mechanical equipment, including hauling or deliveries by trucks, shall start before 8:00 a.m. and all equipment must shut down before 5:00 p.m. unless approved by the Engineer.

Written requests to exceptions shall be provided by the Contractor at least 7 calendar days prior to proposed work.

Exceptions to working days or hours will be considered only when, in the opinion of the Engineer, construction during the specified workdays/hours would inconvenience the public and neighboring residents more than working at other hours or on weekends or holidays or is deemed to be in the best interest of the City. Exceptions will not be granted merely to expedite the construction work or for the Contractor's convenience. If these exceptions are granted, Contractor shall comply with East Palo Alto Municipal Code Section 16.08.030, which restricts hours of construction noise Monday - Friday between 7:00 a.m. and 6:00 p.m. Saturday hours of operation shall be between 8:00 a.m. – 5:00 p.m.

No work shall be performed on Sundays and City Holidays. City Holidays are:

- New Year's Eve and New Year's Day
  - If the 1<sup>st</sup> of January falls on a Saturday, the holiday will be observed on the Thursday and Friday prior to New Year's Day. If the 1<sup>st</sup> of January falls on a Sunday or Monday, the holiday will be observed on Friday and Monday.
- Martin Luther King, Jr. Day
- Lincoln's Birthday
- Cesar Chavez Day
- Presidents Day
- Memorial Day
- Independence Day
  - If the 4<sup>th</sup> of July falls on a Saturday, the holiday will be observed on the Friday prior to Independence Day. If the 4<sup>th</sup> of July falls on a Sunday, the holiday will be observed on the following Monday.
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving

- Christmas Day

### **7.11 Prosecution of Work**

To minimize public inconvenience and possible hazards and to restore the streets and other work areas to their original condition and former state of usefulness as soon as practicable, the Contractor shall diligently prosecute the work to completion. If, in the Engineer's opinion the Contractor fails to prosecute the work to the extent that the above purposes are not being accomplished, the Contractor shall, upon orders from the Engineer, immediately take the steps necessary to fully accomplish said purposes. All costs for prosecuting the work as described herein shall be absorbed in the Contractor's bid. Should the Contractor fail to take the necessary steps to fully accomplish said purposes, after orders of the Engineer to do so, the Engineer may suspend the work in whole or in part, until the Contractor takes said steps. With or without such suspension, the Engineer may cause such steps to be taken by force account or by other means at the Contractor's expense.

### **7.12 Suspension of Work**

Work may be stopped or suspended in whole or in part when, in the Engineer's opinion, the suspension is necessary and in the interest of the City. The Contractor shall immediately comply with any written order of the Engineer suspending work. Suspended work shall be resumed upon written order of the Engineer. An extension of contract time equal to the period of suspension shall be issued to the Contractor by change order. Any claim by the Contractor for an adjustment of the contract sum or the contract time shall be made within ten (10) working days after the start of suspension of the work.

If work is suspended through no fault of the City, all expenses and losses incurred by the Contractor during such suspensions shall be borne by the Contractor. If the Contractor fails to properly provide for public safety, traffic, and protection of the work during periods of suspension, the City may elect to do so, and shall deduct the cost thereof from monies due the Contractor. Such action will not relieve the Contractor from any liability.

### **7.13 Default by the Contractor and Termination of Control**

As a result of any of the following events, the Contractor shall be deemed to be in default:

- a. If the Contractor is in bankruptcy or makes a general assignment for the benefit of creditors, or
- b. If the Contractor fails to make prompt payment to subcontractors for labor or materials, or
- c. If a receiver is appointed on account of the Contractor's insolvency, or
- d. If the Contractor fails to provide enough properly skilled workmen or enough materials to ensure compliance with the construction time schedule, or
- e. If the Contractor fails to perform any portion of the work within the timing requirements of the Contract Documents, or abandons the project site, or
- f. If the Contractor disregards instructions from the Engineer or violates any provision of the contract, or
- g. If the Contractor fails to replace or repair any damage caused by the Contractor or its agents, representatives, contractors, subcontractors, or employees in connection with the performance of the work, or
- h. If the Contractor violates any legal requirement related to the work.

In case of default, the City may give written notice to the Contractor and the Contractor's bonding agent that if the default is not remedied within ten (10) calendar days or the Contractor does not provide adequate written assurance to the satisfaction of the Engineer that the cure will be forthcoming, the Contractor's control over the work may be terminated as of the date specified in the written notice.

Upon such termination of control the City may enter upon and take possession of the entire work and may also take possession, for the purpose of completing the work, of all of the Contractor's tools, equipment and appliances upon the work, and all materials on the site or stored off-site for incorporation into the work. The City may, at its sole option and without further notice to anyone, complete the work by day

labor, by contract entered into by negotiations, by competitive bidding, by calling upon the performance of the performance bond surety, or by other means as the City, in its discretion, shall elect.

After termination of the Contractor's control over the work as herein provided, the Contractor shall not be entitled to any further payments under the contract until the entire work thereunder has been fully completed and finally accepted by the City. After such completion and acceptance, if the "unpaid balance of the contract price" (as defined in the next paragraph) exceeds the sum of the amounts expended by the City in taking over and completing the work, including all managerial and administrative expense incurred by the City on account thereof and the amount of all damages incurred by the City by reason of the Contractor's default, such excess shall be paid to the Contractor. If the said amount expended exceeds the unpaid balance, the Contractor and the Contractor's surety shall be liable to the City for the difference. At the Contractor's request, the expense incurred by the City in taking over and completing the work, and the amount of any damage incurred by the City by reason of the Contractor's default shall be audited and certified by an independent third party, whose certificate thereof shall be binding and conclusive upon the parties.

For the purposes of the computations required by the paragraph above, the "unpaid balance of the contract price" shall be the original contract price as adjusted by any change orders issued prior to termination of the Contractor's control, less all payments made on account thereof prior to such termination, and less any and all amounts withheld or paid pursuant to stop notices filed with the City upon claims of subcontractors or others from equipment, labor or materials furnished to the work on behalf of the Contractor.

Upon completion and acceptance of the work, the Contractor shall be entitled to the return of all materials not used in the work, but without claim against the City for loss or damage with respect thereto, and shall be entitled to the return of all the Contractor's equipment, tools and appliances taken possession of by the City, but without claim against the City for any charge for the use thereof or for usual and ordinary depreciation and wear and tear.

The exercise of remedies provided for in this sub-section, for default by the Contractor, shall be in addition to, and shall not be deemed a waiver by the City of any other rights or remedies due the City under the contract provisions, for default by the Contractor.

#### **7.14 City's Right to Terminate Contract**

The City may, at its option, terminate the Agreement, in whole or from time to time in part, at any time by giving notice to the Contractor. Upon such termination, the Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of the Contractor, the City shall pay the Contractor in accordance with this sub-section. Upon termination, the obligations of the Contractor for portions of the work already performed shall continue.

- a. Upon receipt of a Notice of Termination, the Contractor shall, unless the notice directs otherwise, do the following:
  1. Immediately discontinue the work to the extent specified in the notice.
  2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary to complete such portion of the work that are not to be discontinued.
  3. Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent that they relate to the performance of the discontinued portion of the work.
  4. Thereafter do only such work as may be necessary to preserve and protect the work already in progress and to protect materials, plants, and equipment on the project site or in transit thereto.
- b. Upon such termination, the City shall pay to the Contractor as a sole and exclusive remedy for

the termination, the sum of the following, and the Contractor will be entitled to no other compensation or damages, and expressly waives same:

1. The amount of the contract amount allocated to the portion of the work properly performed by the Contractor as of the date of termination, less sums previously paid to the Contractor, plus
2. Previously unpaid costs of any items delivered to the project site which were fabricated for subsequent incorporation in the work, plus
3. Any proven losses with respect to materials and equipment directly resulting from such termination, plus
4. Reasonable demobilization costs in excess of what would have been incurred if work were not terminated, plus
5. Reasonable costs for preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

The City may terminate the Agreement at its own discretion or when conditions encountered during the work make it impossible or impracticable to proceed, or when the City is prevented from proceeding with the Agreement by act of God, by law, or by official action of a public authority.

#### **7.15 Time of Completion and Days Charged**

The Contractor shall diligently prosecute and fully complete the work within the number of calendar or working days set forth in the Notice to Bidders or shall be subject to liquidated damages. Full liquidated damages will be assessed for delays beyond the required substantial completion date. Reduced liquidated damages will be assessed for delays after the substantial completion date. LDs Time is of the essence in the performance of all obligations under the Contract Documents, and all timing requirements shall be strictly adhered to unless otherwise modified by the City. See General Provisions, Sections 7.12, "Prosecution of Work", and 7.16, "Liquidated Damages".

Under a calendar day contract, City observed holidays and inclement weather delays are to be anticipated and unless there is a deviation from what is customary for the time of year the project is under construction, no additional days will be granted. Every day, including holidays, Saturdays and Sundays shall be counted as a day charged under a calendar day contract.

Under a working day contract, the Contractor will be given credit for City observed holidays and inclement weather delays, in accordance with the State Standard Specifications. Should the Contractor prepare to begin work at the regular starting time in the morning of any day on which inclement weather, or the conditions resulting from the weather prevents the work from beginning at the usual starting time and the crew is dismissed as a result thereof and the Contractor does not proceed with at least 75 percent of the normal labor and equipment force engaged in the current controlling operations for at least 60 percent of the total daily time being currently spent on the controlling operations, the Contractor will not be charged for a working day whether or not conditions should change thereafter.

#### **7.16 Liquidated Damages**

The City and the Contractor, by execution of the agreement, each agree that time is of the essence in the performance of the work, and that actual damages for inconvenience and loss from any delay in completion of the contract beyond the date provided in the Notice to Bidders is extremely difficult or impossible to determine.

The City and the Contractor further agree, as specified in the Notice to Bidders, that liquidated damages shall be assessed for each and every calendar or working day required to complete the contract in excess of the contract time established for the project, and that the amount stated therein is a reasonable estimate of the amount of such damages. The Engineer may deduct any liquidated damaged owed to the

City, as determined by the Engineer from any payments otherwise payable to the Contractor under this agreement.

Nothing contained herein shall limit the City's rights or remedies against Contractor for any default other than failure to complete the work within the contract time. This provision for liquidated damages shall not be applicable nor act as a limitation upon the City if the Contractor abandons the work. In such event, the Contractor shall be liable to the City for all losses incurred.

The date of the Engineer's Certificate of Substantial Completion shall be the termination date, if applicable, of full liquidated damages. The completion date of the project shall be the termination date, if applicable, of reduced liquidated damages, after substantial completion. Tiered liquidated damages shall be more fully detailed in the Special Provisions.

Separate from the above-mentioned liquidated damages, the Contractor may be responsible for paying all damages incurred by third parties due to non-completion of the project by the date specified.

### **7.17 Delays and Extensions of Time**

- a. *Excusable Delays* – shall mean delays in the prosecution or completion of the work which result from causes beyond the control of the Contractor and City and which could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor, suppliers, or any tier of the Contractor's subcontractors. Excusable Delays fall into the following categories:
  1. *Abnormal Delays* – Excusable Delays caused by acts of god, fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes, freight embargoes, and shortages of materials insofar as they prevent the Contractor from proceeding with at least seventy-five (75) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical path activity.
  2. *Weather Delays* – Excusable Delays due to inclement weather conditions or the conditions resulting from weather prevent the Contractor from proceeding with seventy-five (75) percent of the normal labor and equipment force engaged in the current critical activity item for a period of at least five (5) hours per day toward completion of the current critical path activity.
  3. *Material Shortage Delays* – Excusable Delays due to shortages of material, provided that the Contractor submits satisfactory proof to the Engineer. For the proof to be satisfactory, the Contractor must demonstrate that every effort to obtain the materials from all known sources within reasonable reach of the proposed work. Only the physical shortage of material, caused by unusual circumstances, will be considered under these provisions as an excusable delay, and no consideration will be given to any claim that material could not be obtained at a reasonable, practical, or economical price, unless it is shown to the satisfaction of the Engineer that such material was only available at exorbitant prices. A material shortage delay will not be considered for material ordered or delivered late or for material whose availability is affected by virtue of mishandled procurement. The above provisions shall apply equally to equipment to be installed in the work.
- b. *Compensable Delays* – shall include delays that occur in the prosecution or completion of the work, through no fault of the Contractor which prevent the Contractor from proceeding with at least seventy-five (75) percent of the normal labor and equipment force for at least five (5) hours per day toward completion of the current critical activity item(s) on the latest favorably reviewed progress schedule due to the following causes:
  1. Delays due solely to the actions and/or inactions of the City.
  2. Delays due to changed conditions as defined in General Provisions, Section 4.05, "Requests

for Information, Inconsistencies and Changed Conditions”.

3. Delays due to other Contractors employed by the City who interfere with the Contractor's prosecution of the work as defined above.
  - c. Inexcusable Delay – means any delay in the completion of the work beyond the expiration of the contract time resulting from causes other than Excusable Delays or Compensable Delays. An Inexcusable Delay shall not entitle the Contractor to an extension of the contract time or an adjustment of the contract sum.
  - d. Concurrent Delays – those periods of delay when the prosecution of the work is delayed during the same period of time due to causes from a combination of the delays defined as Excusable, Compensable or Inexcusable.

If the Contractor desires an extension of time, the Contractor shall file a written request based upon the delays reported. The Engineer will ascertain the facts, the extent of the delays, and the effect upon the entire project, and the City will grant an extension of time equivalent to verified time lost. The request for an extension of time must be made no later than ten (10) working days after the start of the condition that purportedly caused the delay, and no later than fifteen (15) working days after the date on which performance on the condition purportedly causing the delay has ended.

Contractor may make a delay claim for an extension of the contract time for an Excusable Delay or a Compensable Delay. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the contract time shall be the number of calendar days from the commencement of the first delay to the cessation of the delay which ends last. If an Inexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the contract time shall be the number of calendar or working days, if any, by which the Excusable Delay or the Compensable Delay exceeds the Inexcusable Delay.

For a Compensable Delay, the Contractor may make a delay claim for an adjustment in the contract sum in an amount equal to the sum of the actual and unavoidable additional costs of labor, material, and equipment furnished at the site by the Contractor or subcontractors.

Extensions of time, when granted, will be based upon the effect of delays to the project as a whole and will not be granted for non-controlling delays to minor portions of the work unless it can be shown that such delays did, in fact, delay the progress of the project as a whole. For purposes of determining delays, all float associated with the project schedule shall belong to the project. See General Provisions, Section 7.04, “Construction Schedule”.

If delays are caused by unforeseen events beyond the control of either the Contractor or the City, such delays will entitle the Contractor to an extension of time as provided herein, but the Contractor shall not be entitled to damages or additional payment due to these delays. War, governmental regulations, labor disputes, strikes, fires, floods, adverse weather necessitating cessation of work, other similar action of the elements, inability to obtain materials, equipment, or labor because of Federal Government restrictions arising out of National Defense, required extra work, action or inaction by the City, or other specific reasons as may be further described in the specifications may constitute such a delay. If delays beyond the Contractor's control are caused by reasons other than those mentioned above, but are substantially equal in gravity to those enumerated, an extension of time may be granted, if deemed by the Engineer to be in the best interests of the City.

For Compensable Delay periods resulting in indirect overhead expenses, the Contractor shall be reimbursed as provided for in General Provisions, Section 4, “Changes in Work”.

### **7.18 Substantial Completion**

When work in accordance with the Contract Documents has progressed to a stage of one-hundred percent (100%) complete, as determined by the Engineer, except for the completion of minor punch list

items of deficiencies or omissions in the work which require correction in order to satisfy the agreement, yet do not impair the City's ability to occupy and fully utilize the work for its intended purpose, the project shall be deemed "Substantially Complete". Portions of the work may also be designated by the City as substantially complete if the Contract Documents require separate delivery.

When the Engineer determines that the work or such designated portions of the work are substantially complete, the Engineer will prepare and sign a Certificate of Substantial Completion. The date of substantial completion shall establish the date of occupancy by the City and the transfer of responsibility from the Contractor to the City for such items as security, maintenance, heat, utilities, insurance, and damage to the work from causes other than that of the Contractor. Unless otherwise indicated in the Certificate of Substantial Completion, the Contractor's guarantee for the work shall commence upon the date of substantial completion.

### **7.19 Project Completion and Closeout**

After the Contractor has received the Certificate of Substantial Completion and has only minor work remaining, project closeout may begin. The following items and procedures are required as part of the project close out process.

- a. Within 14 days from the issuance of the Certificate of Completion, a pre-final inspection will be scheduled and conducted by the City. As a result of the inspection, the City will advise the Contractor of any work that must be completed, in the form of a punch list.
- b. Following the completion of punch list items, the Contractor shall make a written request to the city to conduct a final inspection. The written request shall be accompanied by a Certification that the work has been performed in accordance with the Contract Documents and shall be on the Contractor's Certification of Completion form enclosed in Appendix A of these General Provisions.
- c. Upon satisfactory completion of the punch list items, the City will consider the construction work complete and issue a completion letter establishing the completion date and detailing required closeout items for the contract.
- d. The contractor shall provide a final payment request with lien releases (if applicable) in a format acceptable to the City.

Should it become necessary, due to developed conditions, for the City to occupy any portion of the work, or any part of any structure or equipment, before the contract is completed or accepted, such occupancy shall not constitute an acceptance of any part of the work, unless so stated in writing by the City.

### **7.20 Acceptance**

Acceptance by the Director of Public Works will be recommended after the work has been fully completed and when all the requirements for Acceptance are met as set forth in the Contract Documents. Following acceptance, a Notice of Completion will be filed with the County Recorder. Remaining contract retention will be released within 35 days of recording of the Notice of Completion with the County Recorder or within 60 calendar days, whichever is shorter.

### **7.21 Protection and Cleanup**

The scope of this project includes the protection of all work until completion of all the work and removal of all excess construction equipment, materials and debris from the site, in accordance with these specifications.

The Contractor shall be responsible for repair or replacement of work damaged due to any vandalism prior to completion of the work.

### **7.22 Risk of Loss**

The Contractor shall be responsible for the charge, care and protection of the project and shall bear all risks of injury or damage to the work, materials or equipment delivered to the site, by any means including fire, earthquake, wind, storm or other action of the elements, vandalism, or loss by theft, from the date of commencement of construction to the date of formal acceptance by the City Council. The Contractor shall rebuild, repair, restore and make good all injuries or damage to any portion of the work, and shall bear the entire expense thereof, except such injuries or damages that are caused by riot, insurrection, acts of the Federal or State Government, or a public enemy in time of war.

### **7.23 Use of Improvements During Construction**

The City reserves the right to take over and utilize all or part of any completed facility or appurtenance. Such action by the City will not relieve the Contractor of responsibility for injury or damage to said completed portions of the improvement resulting from use by public traffic, from the action of the elements or from any other cause attributable to the Contractor's operations or negligence. The Contractor will be required to restore such portions of the improvement before final acceptance. Nothing in this Section shall be construed as relieving the Contractor from full responsibility for correcting defective work or materials.

## **SECTION 8 – RESPONSIBILITIES OF THE CONTRACTOR**

### **8.01 Contractor's Responsibility for the Work**

The Contractor shall supervise, coordinate, and direct the work using Contractor's best skill and attention. Contractor shall have control over and be solely responsible for construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the work in accordance with the terms of the Contract Documents.

The Contractor shall be responsible for assuring that all portions of the work, including those portions already performed under the Contract, conform to the requirements of the Contract Document and are ready to receive subsequent work.

The Contractor shall furnish and maintain in good condition all equipment and facilities as required for the proper execution and inspection of the work. Such equipment and facilities shall meet all requirements of applicable ordinances and laws.

### **8.02 Contractor's Responsibility for Subcontracted Work**

The City will deal directly with and make all payments to the Contractor only. The Contractor shall be responsible for the coordination of all trades, subcontractors, and suppliers engaged upon the work. Neither the City nor the Engineer will undertake to settle any differences between the Contractor and the Contractor's subcontractors.

All persons engaged in the work, including subcontractors, will be considered as employees of the Contractor. The Contractor will be held responsible for their work and shall be responsible to the City for acts and omissions including those by their respective agents and employees.

When subcontracted work is not prosecuted in a manner satisfactory to the Engineer, the Contractor shall be notified to take corrective action within a specified time. If timely correction is not made, then upon receipt by the Contractor of written instructions from the Engineer, the Subcontractor shall be removed immediately from the work and shall not be reemployed.

### **8.03 Superintendent**

The Contractor shall have on the job at all times a competent superintendent, employed by the Contractor, who can read and write in English, and shall represent the Contractor and all direction given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall employ, and provide a written letter designating a superintendent or representative who shall be present on the job site whenever work is in progress to coordinate all work with the City and neighboring property owners. A backup representative may also be provided. A joint venture shall designate only one Superintendent.

Directions and information given to the Superintendent shall be considered as having the same effect as if delivered to the Contractor and the Superintendent shall have complete authority to act on behalf of the Contractor.

City approval of the Superintendent is required prior to starting work. The City reserves the right to request an appropriately qualified replacement of the Superintendent any time during construction of the project. Contractor shall provide the Engineer with the Superintendent's telephone number, along with an after-hours emergency contact number of a responsible person who shall correct hazardous situations, should they occur, during times other than the normal working hours.

### **8.04 Character of Employees**

Only competent supervisors and workers shall be employed on the work, and, if required by the Owner, the Contractor shall discharge any person who commits trespass or is, in the opinion of the Owner, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. Such discharge shall not

be the basis of any claim for compensation or damages against the City of East Palo Alto or any of its officers, employees or agents.

### **8.05 Laws to be Observed**

The Contractor shall fully observe and comply with all State and Federal laws including those of CAL-OSHA and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall also cause all agents and employees engaged on the project to observe and comply with all such laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall protect and indemnify the City of East Palo Alto and all officers, employees, and agents thereof connected with the work against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the Contractor or its employees, or subcontractors. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or contract for the work in relation to any such law, ordinance, regulation, order or decree, whether by the Contractor or its employees, or subcontractors, the Contractor shall forthwith report the same to the Owner in writing.

- a. *Non-Discrimination* – Contractor shall abide by all federal and state laws preventing discrimination in the employment of persons upon public works and shall ensure by appropriate contract provisions that all subcontractors are similarly obligated to comply with all such laws. These laws include, but are not limited to the following California Labor Code Section 1735 which provides that “No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter”. Likewise, Contractor and all of its subcontractors shall abide by the provisions of California Labor Code Section 1777.6 prohibiting discrimination in the acceptance of otherwise qualified apprentices; and California Labor Code Section 3095 which declares unlawful the discrimination in any recruitment or apprenticeship program on stated grounds. City shall be entitled to retain and withhold all penalties as authorized pursuant to California Labor code, Division 2, Part 7, Chapter 1, commencing with Section 1720 and following, in accordance with the provisions of that Chapter, and the regulations established by the Director of Industrial Relations pursuant to the statutory authority of such chapter.
- b. *Hours of Labor* – Pursuant to Labor Code, Sections 1810, eight (8) hours labor shall constitute a legal day’s work and as such, the Contractor shall not permit any worker to labor more than eight (8) hours during any one (1) calendar day or more than forty (40) hours during any one (1) calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Pursuant to Labor Code, Sections 1813, Contractor shall forfeit to the City, as a penalty, twenty-five dollars (\$25.00) for each worker employed in the execution of this Agreement by Contractor, or any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours in any one (1) calendar week in violation of the terms of this Section or in violation of the provision of any law of the State of California. Such forfeiture amounts may be deducted from the contract sum. Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each calendar day and each calendar week by each worker employed on the project, which record shall be kept open at all reasonable hours to the inspection of the City, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.
- c. *Prevailing Wage* – As identified in the Notice to Bidders, the work contemplated by this agreement is a public work subject to prevailing wages under California Labor Code, Sections 1720 et. seq. The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the work is to be performed for

each craft, classification, or type of worker required to perform the work. A schedule of the most recent general prevailing per diem wage rates made available to the City will be on file at the City's principal facility office and will be made available to any interested party upon request. This prevailing wage rate schedule is provided by the City for Bidder's information only and is not guaranteed by the City to be current. Contractor is obligated to verify all appropriate prevailing wage rates and pay those rates as required. By this reference the verified current schedule of prevailing wage rates is made part of the Contract Documents. Contractor shall pay not less than the prevailing per diem wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Contractor in the execution of the work. Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the specified prevailing per diem wage rates to all workers employed by such Subcontractors in the execution of the work.

Contractor shall forfeit to the City, as a penalty, no more than fifty dollars (\$50.00) for each calendar day or portion thereof for each worker that is paid less than the specified prevailing per diem wage rates for the work or craft in which the worker is employed for any portion of the work done by Contractor or any Subcontractor in violation of the provisions of the Labor Code, and in particular Sections 1770 to 1781 thereof, inclusive. Such forfeiture amounts may be deducted from the contract sum. Contractor shall also pay to any worker who was paid less than the specified prevailing per diem wage rate for the work or craft for which the worker was employed for any portion of the work, for each calendar day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

The City will not recognize any claim for additional compensation because of the payment by the Contractor for any wage rate in excess of prevailing wage rates set forth in the Agreement, including payment in excess of the prevailing wage for extra work paid by force account. The possibility of wage increases is one of the elements to be considered by the Contractor in determining the Contractor's bid and will not, under any circumstances be considered as the basis of a claim against the City under the Agreement.

- d. *Certified Payroll Records* – Pursuant to Labor Code, Sections 1776, Contractor and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the work. All payroll records shall be certified as being true and correct by Contractor or Subcontractors keeping such records; and the payroll records shall be provided to the City no later than three weeks after closing of payroll for City-funded projects, and no later than one week for federal aid projects. Certified payroll shall also be made available for inspection upon request by the State of California Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

Each Contractor and every lower-tier Subcontractor will be required to submit certified payrolls and labor compliance documentations electronically via the software LCPTracker. Electronic submission will be a web-based system, accessed on the World Wide Web by a web browser. Each Contractor user will be given a Log-On identification and password to access the City's reporting system.

- e. *Apprentice Program* – Attention is directed to State of California Labor Code, Sections 3095, 1777.5, 1777.6, and 1777.7 and Title 8, California Code of Regulations, Section 200, and the applicable Sections that follow. Responsibility for compliance with these requirements lies with the Contractor. To ensure compliance and complete understanding of the law requiring apprentices, and specifically the required ratio thereunder, Contractor or Subcontractors should, where some question exists, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, California, or one of its branch offices prior to commencement of the

work. In the event Contractor willfully fails to comply with this Section, it will be considered in violation of the requirements of the Contract.

Contractor and all of its subcontractors shall abide by the provisions of California Labor Code Section 1777.6 prohibiting discrimination in the acceptance of otherwise qualified apprentices; and California Labor Code Section 3095 which declares unlawful the discrimination in any recruitment or apprenticeship program on stated grounds. City shall be entitled to retain and withhold all penalties as authorized pursuant to California Labor code, Division 2, Part 7, Chapter 1, commencing with Section 1720 and following, in accordance with the provisions of that Chapter, and the regulations established by the Director of Industrial Relations pursuant to the statutory authority of such chapter.

Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Contractor or Subcontractors of journey worker trainees who may receive on-the-job training to enable them to achieve journey worker status in any craft or trade under standards other than those set forth for apprentices.

### **8.06 Special Permits, Licenses and Fees**

Unless otherwise stated in the Special Provisions, the Contractor shall procure all permits and licenses, pay all charges and fees, including a City business license tax, and give all notices necessary for lawful prosecution of the work. All permits, licenses, and other authorizations shall be secured in sufficient time to prevent delays to the work. The Contractor shall comply with the provisions of said permits, licenses and other authorizations.

**In the event that the** City has obtained permits, licenses, or other authorization applicable to the work in conformance with the requirements of California Environmental Quality Act (CEQA) (Public Resources Code, Sections 21000 and following), the Contractor shall comply with the provisions of these permits, licenses, and other authorizations.

For City Capital Improvement Construction Projects, the Contractor shall obtain a “No Fee” encroachment and/or building permit. Contractor shall coordinate through the Engineer and the City’s Building Division to ensure that all appropriate construction inspections occur. Contractor shall be responsible to obtain all signatures required for the work.

### **8.07 Coordination and Cooperation**

Construction work by utility companies or other contractors may be needed or may be occurring simultaneously within or adjacent to the limits of work for this project. The Contractor shall coordinate and cooperate with all other contractors and utility companies throughout the duration of this project to avoid delays and minimize interference and conflicts. Cooperation will be required in the arrangement for the storage of materials, and in the detailed execution of the work. It is the Contractor’s responsibility to ascertain the nature of work by others, coordinate the work, and install, modify, and maintain traffic control as necessary to avoid interferences and delays on the construction activities. Failure of the Contractor to keep informed of the work progressing on the site and failure to give written notice of lack of progress or defective workmanship by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with Contractor’s own work.

The City reserves the right to perform work or allow others to perform work, as necessary, within or adjacent to the limits of this project, at any time. If the Contractor or any of the Contractor’s Subcontractors or employees cause loss or damage to any separate contractor on the work, the Contractor, by agreement or arbitration will settle any claim for such loss or damage if the Contractor deems it necessary. If such separate contractor shall sue the City, on account of any loss so sustained, the City shall notify the Contractor, who shall indemnify and save harmless the City against any loss or damage arising therefrom, including the cost and expense of defending any such suit.

The Contractor's bid shall absorb all costs involved in coordinating the work with others. The Contractor will not be entitled to additional compensation from the City for damages resulting from such simultaneous, collateral and essential work.

### **8.08 Use of Premises**

The Contractor shall confine construction activities to the project limits; which shall consist of right-of-way, easements and/or property owned by the City of East Palo Alto, without exception, unless otherwise authorized in writing by the City. With prior approval of the Engineer, adjacent street right-of-way may also be utilized for day-to-day operations. Unless approved by the Engineer, no storage of materials and equipment will be allowed to remain within the right-of-way during non-working hours, on the weekends, or during holidays.

Each day, after the completion of construction operations, unless otherwise approved by the Engineer, the project limits shall be secured. All excess materials and equipment not protected by approved traffic control devices (such as k-rails) shall be relocated to a staging area or demobilized. If the area is accessible to the public, trench spoils shall be off-hauled daily and open excavations shall be protected with steel plates.

Personnel of Contractor and Subcontractors shall not occupy, live upon, or otherwise make use of the project site during any time that work is not being performed at the project site, except as otherwise provided for in the Contract Documents for issues such as site security.

### **8.09 Construction Staging and Field Office**

If additional space beyond the construction limits is necessary for staging, the Contractor shall make special arrangements with neighboring property owner(s) to secure a staging area for a field office and/or material and equipment storage at the Contractor's own cost and initiative. The staging area must be fenced, with screening, and shall be operated in a manner that minimizes the inconvenience to neighbors.

Areas used to store materials, supplies or equipment overnight shall be defined as a staging area. City streets shall not be used as staging areas unless specifically authorized in writing by the City Representative. Vacant and/or city-controlled land may be used as staging area only with written permission of the City Representative. Privately owned lots shall not be used as staging areas without specific written consent of the property owner. A copy of such private property owner consent shall be submitted to the City Representative prior to use of private property as a staging area. No equipment shall be left on residential streets on Saturday, Sunday or holidays unless work is active on the day.

The Contractor is encouraged to negotiate side agreements with the property owner of such sites prior to submitting bids. In addition to approval from the property owner, the Contractor may also need to secure a Use Permit from the City's Planning Division.

### **8.10 Site Security**

Contractor shall be responsible for the care and custody of work and the site, including all necessary security provisions, on a 24-hour per day basis throughout the entire term of the Agreement. The Contractor shall provide and maintain storage facilities and employ such measures as will preserve the specified quality and fitness of materials to be used in the work.

### **8.11 Construction Water**

Construction water is available at cost to the Contractor. The Contractor is responsible for obtaining the required hydrant construction meter from the Water Department located at 2415 University Ave, second floor, in the City of East Palo Alto or the Palo Alto Park Mutual Water Company.

The construction meter shall be furnished with a Back Flow Preventer (BFP) with a single or double check valve. The Contractor shall bare full responsibility of the water meter and any apparatuses attached once issued by the Water Department. The Contractor shall be responsible in maintaining all *hydrant valve stems* using the proper *hydrant wrench* and maintained *correct placement* of the meter to the hydrant at

all time. Contractor shall use proper treatment methods of cleaning all attached hoses prior of connection to the (BFP).

### **8.12 Project Site Maintenance**

- a. *Disposal of Material* – Unless otherwise shown on the plans or specified herein, all excess materials and materials removed from existing improvements shall become the property of and be disposed by the Contractor. The Contractor shall be responsible for all costs associated with disposing all excess materials in a safe and legal manner. No material shall be placed on private or public property without prior approval from the City and the property owner. The Contractor shall not allow any refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed upon paved streets, into manholes or into the City's storm drain system.

Contractor shall establish a system for daily collection and disposal of waste materials from construction areas and elsewhere on the site. Contractor shall handle waste materials that are hazardous, dangerous, or unsanitary separately from inert waste by containerizing appropriately. Burning or burying of waste materials on site will not be permitted.

All materials removed from the existing improvements identified in the project plans to be salvaged, shall be delivered to the City Corporation Yard at 221 Commercial Street or at any other site designated by the Engineer within the City, at no additional cost.

- b. *Cleanup and Dust Control* – At all times during construction, including weekends and holidays, and throughout all phases of construction, including work suspensions and until final acceptance of the project, the Contractor shall keep the work site clean and free from rubbish, debris, and prevent the formation of an airborne dust nuisance.

Materials and equipment shall be removed from the site as soon as they are no longer necessary. Upon completion of the work and before final inspection, the entire site shall be cleared of equipment, unused materials, and rubbish so as to present a satisfactory clean and neat appearance. All cleanup costs shall be absorbed in the Contractor's bid.

The Contractor shall abate dust nuisance by cleaning, sweeping, and sprinkling with water, those excavated areas of dirt or other materials which are prone to causing dust, within both the project site and the storage or staging area. If required or directed by the Engineer, the Contractor shall provide an approved water truck of large capacity with spraying capability.

Contractor shall perform thorough daily street sweeping as deemed necessary by the City Representative. The contractor shall have on-site or readily available, street sweeping equipment capable of performing sweeping with mechanical brooms and with either regenerative air vacuum filter technology. Mechanical brooms shall be used for wet soil, or soils that are ground into the texture of the pavement. Regenerative air or vacuum filter equipment shall be used for dry soils to minimize dust disturbance. If in the opinion of the City Representative, sweeping is not performed in an adequate manner, the City reserves the right to perform the necessary work with City or other forces and back-charge the contractor for the cost.

The Contractor shall be required to apply water for dust control immediately during construction efforts and within one (1) hour after notification by the Engineer that an airborne nuisance exists. If dust control is not adequate in the opinion of the Engineer, the Engineer will have this work done by others and will deduct such cost from the total contract price.

All hauling trucks or other construction vehicles leaving the site shall be cleaned of mud or dirt clinging to exterior body surfaces or wheel rims before traveling on City streets outside the work limits. All trucks coming to or leaving the site with materials or loose debris shall be loaded in a manner, which will prevent the dropping of materials or debris on City streets. Spillage resulting

from hauling operations along or across any public traveled way shall be removed immediately at the Contractor's expense.

When construction operations cause dirt to be deposited on public streets, the Contractor shall immediately remove such material. Streets shall be cleaned by street sweeping, rather than flushing, so as to prevent mud from entering the storm drain system.

Excess excavated material shall be removed from the site immediately. Sufficient material may remain for use as backfill if permitted by the specifications. Forms and form lumber shall be removed from the site as soon as practicable after stripping.

Failure of the Contractor to comply with the Engineer's cleanup orders may result in an order to suspend work until the condition is corrected. No additional compensation will be allowed as a result of such suspension.

- c. *Air Pollution Control* – The Contractor shall not discharge smoke, dust, or any other air contaminants into the atmosphere in such quantity as will violate the regulations of any legally constituted authority.
- d. *Noise Control* – The Contractor shall make every reasonable effort to control noise generated as a result of construction to the satisfaction of the Engineer. Use of an air compressor, jackhammer or other loud, vibrating sound generating device shall be limited to operations between the hours of 8:00 a.m. and 4:00 p.m. unless otherwise authorized by the Engineer.
- e. *Pest Control* – At the time of acceptance, structures entirely constructed under the contract shall be free of rodents, insects, vermin and pests. Necessary extermination work shall be arranged and paid for by the Contractor as part of the contract work within the contract time and shall be performed by a licensed exterminator in accordance with requirements of governing authorities. The Contractor may be liable for injury to persons or property and responsible for the elimination of offensive odors resulting from extermination operations.
- f. *Sanitation* – The Contractor shall provide and maintain enclosed toilets and hand washing stations for the use of employees engaged in the work. These accommodations shall be maintained in a neat and sanitary condition. They shall also comply with all applicable laws, ordinances and regulations pertaining to the public health and sanitation of dwellings and camps.
- g. *Wastewater* – Wastewater systems shall not be interrupted. Should the Contractor disrupt existing sewer facilities, the Contractor shall immediately notify the Engineer, and the Contractor shall establish a plan, subject to the approval of the City, to convey the sewage in closed conduits and disposed of it back into the sanitary sewer system. Sewage shall not be permitted to flow in trenches or be covered by backfill.
- h. *Temporary Light, Power and Water* – The Contractor shall furnish, install, maintain, and remove all temporary light, power, and water, including piping, wiring, lamps, and other equipment, necessary for the work at the Contractor's own expense. The Contractor shall not draw water from any City water source, except to extinguish a fire, without first obtaining a hydrant meter from the City. Temporary wiring and electrical facilities shall be in accordance with applicable provisions of Electrical Safety Orders of the State of California. The Contractor shall provide, maintain, and remove upon completion of work, temporary utilities and construction required for performance of the work, and safety of personnel.

For permanent utility connections, the Contractor shall coordinate with the proper agencies, any utility connections required. Contractor shall be responsible for distribution of power or water to points of use.

- i. *Storm Water Pollution Control* – Storm Water Pollution Control work shall consist of following

Best Management Practices (BMP) for storm water pollution prevention, submitting a Storm Water Pollution Prevention Plan (SWPPP) in compliance with all NPDES requirements, and constructing those facilities which may be required to provide prevention, control, and abatement of water pollution. SWPPP shall address how the Contractor will prevent materials specified above from being rinsed or washed into the storm drain system and which BMPs will be implemented for preventing sediment and pollutant discharges into the stormwater system.

In compliance with State and Federal regulations on construction storm water management and non-point source pollution control, no pollutants will be allowed to enter the storm drainage system. The Contractor shall be responsible for containing and removing any waste from the Contractor's construction operations using the appropriate BMP. The Contractor shall be responsible for cleaning catch basins of solid or liquid waste materials originating from the Contractor's operation before this material migrates further into the storm drain system. Violation of this provision shall cause the City to issue a stop-work notice and take necessary action to require the Contractor to correct and comply with regulations. All costs related to the stop-work action and corrective work to come into compliance shall be fully borne by the Contractor.

All construction efforts shall be conducted in a manner which prevents the release of hazardous material or hazardous waste into the soil or groundwater and minimizes the discharge of pollutants into the storm drain system. The Contractor shall comply with guidelines to prevent pollutants from entering the public storm drain system that would otherwise allow pollutants to flow into creeks and then directly into San Francisco Bay.

All fines or enforcement action by regulatory agencies for violations of permits or NPDES requirements shall be the full responsibility of the Contractor.

The Contractor is prohibited from rinsing or washing any of the following materials into the streets, shoulder areas, inlets, catch basins, or gutters:

- Concrete
- Grout
- Mortar
- Drywall compound
- Cement and stucco
- Solvents and adhesives
- Thinners
- Sediment/dirt
- Cleared vegetation/plant material
- Paints (water and oil based) and paint chips
- Gasoline
- Diesel Fuel
- Oil
- Sawdust
- Asphalt and concrete sawcut slurry
- Fertilizer or pesticides
- Sand blast grit and material
- Other construction materials or wastes

In addition, the Contractor shall implement appropriate measures to reduce sediment and pollutants in storm water discharges from construction sites on jobs within the City of East Palo Alto. Information on Best Management Practices (BMPs) is available from a variety of sources, including (but not limited to) the following references:

[Blueprint for a Clean Bay - Best Management Practices for the Construction Industry to prevent Stormwater Pollution from Construction-Related Activities](http://EastPaloAlto.ca.gov/Portals/0/EastPaloAlto/CDD/Permits/Building/BlueprintforaCleanBay.pdf); City of East Palo Alto latest revision at <http://EastPaloAlto.ca.gov/Portals/0/EastPaloAlto/CDD/Permits/Building/BlueprintforaCleanBay.pdf>

[California State Best Management Practices \(BMP\) Handbooks \(Construction, New Development and Redevelopment, Municipal, and Industrial\) Revised](#). California Storm Water Quality Association, 2003.

[Erosion and Sediment Control Field Manual](#), Third Edition. California Regional Water Quality Control Board San Francisco Bay Region, 1999.

The Contractor shall refer to the Technical Specifications for any additional requirements related to discharges to storm sewers. The City will monitor the construction site to ensure that the Contractor complies with all contract requirements. The Contractor shall submit for review a Storm Water Pollution Prevention Plan that addresses:

1. How the Contractor will prevent materials specified above from being rinsed or washed into the storm drain system, and
2. Which BMPs will be implemented for preventing sediment and pollutant discharges into stormwater discharges.

The Contractor shall not proceed with any site work which potentially creates any material that could enter the storm drain system, until the accepted Storm Water Pollution Prevention Plan is in place.

The first progress payment will not be made until the Storm Water Pollution Prevention Plan has been submitted and favorably reviewed.

### **8.13 Climate Preservation**

Idling times will be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]), or less. Clear signage will be provided at all access points to remind construction workers of idling restrictions.

### **8.14 Preservation of Property**

The Contractor shall be responsible for the protection of public and private property adjacent to the work.

Due care shall be exercised to avoid damage to existing roadway improvements and facilities, adjacent property, roadside trees, lawn and shrubbery not designated for removal, pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines under or above ground, sewer and water laterals, and any other improvements or facilities within or outside the limits of construction. As ordered and approved by the Engineer, the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored, at the Contractor's expense, to a condition as good as when the Contractor entered upon the work, or as good as required by the Contract Documents.

Existing striping damaged during construction within and adjacent to the project site shall be replaced in kind. Partially damaged striping (such as what might occur trenching through a pavement legend), shall be replaced in their entirety.

Any survey monuments that are damaged or removed as part of the construction shall be replaced by the Contractor and a Record of Survey, as required by State law, shall be filed by a licensed Land Surveyor at the Contractor's expense, or as specified above.

The fact that any such improvement or facility is not shown upon the plans shall not relieve the Contractor's responsibility under this Section. It shall be the Contractor's responsibility to ascertain the existence of any underground improvements or facilities indicated on the plans, indicated by locating services, or as evidenced by facilities visible in the field.

### **8.15 Protection of Traffic Signal Facilities**

The Contractor shall give at least 72 hours advance notice to the Engineer before commencing any street work (such as pavement grinding or trenching) that may potentially damage any traffic signal detection loop wires or any other signal facility. This requirement is in addition to any Underground Services Alert notifications. The City will then mark the underground traffic signal facilities.

The Contractor shall not proceed with any grinding, trenching or other underground work until it has been verified with the City Representative that signal facilities have been marked. The Contractor shall be responsible for all damage to traffic signal facilities arising from failure to properly comply with these provisions.

In the event that the Contractor's construction activities cause any failure of a traffic facility, it shall be repaired and be made fully operable within 24 hours of the damage occurring. In the event that such repair is not undertaken within this time limit, the City may repair the facility at the Contractor's expense. In the event that such repair is not undertaken within this time limit, the City will repair the facility and deduct the cost from monies due to the Contractor. The amount deducted will include actual expenses incurred.

### **8.16 Restoration of Adjacent and Existing Improvements**

Contractor shall do all cutting, fitting, or patching of the work required to make all parts of the work come together properly with existing and adjacent conditions.

Unless otherwise provided, the Contractor shall repair or replace all existing improvements (e.g., curbs, sidewalks, driveways, fences, signs, utilities, street surfaces, structures, etc.) damaged or removed as a result of the Contractor's operations. Repairs and replacements shall be at least equal to existing improvements, and shall match in terms of condition, finish and dimension.

All Underground Services Alert (USA) markings on concrete or asphaltic pavement or other structures shall be removed when they are no longer required. Acceptable means of removal include sand blasting or high pressure washing.

All traffic signs and street signs within the limit of work necessarily removed during the various phases of operations shall be temporarily reset by the Contractor at or near the original location upon completion of each phase of construction operations. Prior to removal of all traffic control signs, the Contractor shall take photographs of the site which show the existing location of these signs so that upon completion the photographs will aid in resetting the signs at or near their original location. Traffic control signs and street signs will be replaced upon completion of the work and the cost of removal and replacement will be included in various bid items and no separate payment will be made.

Rural type mail boxes shall be maintained by the Contractor in a manner satisfactory to the property owner and postal service, and the Contractor shall relocate the same as soon as possible to a permanent location in accordance with postal regulations and in a location acceptable to the property owner.

Any object to be removed and reused at other locations shall be removed with due care and delivered or stored at the project's construction storage area, or if approved by the Engineer, at any other site designated by the Engineer within the City. Such objects may consist of street light poles, signal mast arms and other objects directed by the Engineer. Items not approved by the Engineer for reuse purposes, and without salvage value, shall become the property of the Contractor, to be disposed of at Contractor expense, in an acceptable manner.

### **8.17 Archeological Remains**

If archeological remains are uncovered during excavation, earthwork within 100 feet of these materials will be stopped until a professional archeologist registered by the Society for California Archeology (SCA) and/or the Society of Professional Archeology (SOPA) has had an opportunity to evaluate the significance of the find and suggest appropriate mitigation measures.

### **8.18 Access to Private Property**

The Contractor shall schedule and perform operations so as to minimize disruption of access to private property. Prior to blocking access to any private driveway or parking lot entrance, the Contractor shall notify the resident, business owner or tenant of pending closure and allow residents to remove vehicles. During non-working hours no driveway, house or parking lot shall be denied access to a public roadway.

The Contractor shall coordinate with the adjacent property owners and businesses and maintain vehicle and pedestrian access to their properties at all times. Temporary access ramps, fencing, or other measures shall be provided as needed.

### **8.19 Notification and Relations with Property Owners**

A two-week and a **72-hour** prior to construction public notification is required. Two weeks prior to beginning any work on the project, the Contractor shall deliver written notice to all adjoining residents, businesses, tenants and other applicable parties. Notice shall be given for general construction activity as well as specific activities that will inconvenience residents/property owners/tenants or, in any way, affect their operations or access to their property. Such notices shall include the expected date for start of construction, a general description of the construction activity to take place, expected duration, and the name, address, and an approved emergency contact number for the public to reference during the construction. A follow up notice shall be distributed 72-hours prior to the construction activity. Copies of all notices shall be submitted to the Engineer for review and approval prior to public distribution.

All costs involved in providing notification and access shall be included in the amount bid for the various bid items and no additional compensation will be allowed.

### **8.20 Traffic Control and Public Convenience**

The Contractor shall provide for safe movement of all vehicular, bicycle and pedestrian traffic through and around the construction operations with as little inconvenience and delay as possible. The Contractor shall have no amount of work under construction other than what the Contractor can properly prosecute with due regard to the rights and convenience of the public.

Proper conveyance of vehicular traffic and pedestrians through the work area depends upon navigating under unexpected situations. The means of clarifying such conditions to the public include the Contractor's use of signs, flagmen, pavement markings, barricades, lights, cones and delineators. No one standard sequence of signs or control devices will suit all conditions which may result from construction operations. Even for the same work, the conditions may vary from hour to hour, requiring adjustment and revisions of the traffic control in effect. The traffic control requirements specified herein are therefore intended to establish general principles to be observed in the control and regulation of traffic through and around the construction operations anticipated for this project. The requirements set forth in this Section represent the minimum traffic control requirements imposed and the Contractor shall be solely responsible for providing the full extent of traffic control measures that are necessary. Only individuals trained and certified in the principles of implementing traffic control and/or traffic control flagging shall be assigned that responsibility at the work site.

The Contractor shall maintain sufficient safeguards against occurrence of accidents, injuries, or damage to any person or property and shall be responsible for same if such occurs. The Contractor shall also maintain adequate protection of its work and materials from destruction and loss and shall protect the City's property from damage arising in connection with this contract, and shall make good any such damage, destruction or loss.

- a. *Traffic Control Plan* – The Contractor shall submit a Traffic Control Plan to clearly describe proposed traffic control measures. The plan shall be generally in accordance with the Manual of Uniform Traffic Control Devices (MUTCD).
- b. *Traffic Control Devices* - Traffic control devices shall be provided in sufficient quantities and types as required to provide safe and adequate traffic control. During hours of darkness, approved lights and/or flares shall be included, in proper working order, to illuminate signs and hazards and alert approaching traffic. Barricades shall be furnished and maintained along all open trenches in contact with traffic. No work may begin on any day or at any time before traffic control devices have been placed, test driven and, if required, adjusted and revised. All traffic control devices shall be placed in accordance with the Manual of Uniform Traffic Control Devices and the

Contractor's favorably reviewed traffic control plans. Locations of devices shall be adjusted to suit the conditions and circumstances of each detour situation. In all cases, signs shall be placed to most effectively convey their messages to approaching traffic.

The Contractor shall maintain all traffic control devices, at proper locations and in proper working order, at all times during construction operations and whenever a hazard resulting from Contractor's operations exists. The Contractor shall adjust and revise traffic control devices, placement, etc., to suit changing conditions around construction operations. Traffic control devices shall remain in place at all times, as required to alert approaching traffic of upcoming hazards. After hazards have been removed, all traffic control devices shall be removed. Temporary signs shall be removed, or their messages covered.

Daily traffic control measures shall continue until cleanup activities have been satisfactorily completed and all of the Contractor's equipment has been removed from the traveled way.

- c. *Traffic Control Detours* - The Contractor shall direct, divert and detour traffic through, around and adjacent to construction operations in accordance with the traffic control plans specified in the Contract Documents or in accordance with the Contractor's favorably reviewed traffic control plans.
1. *Field Review of Detours* - Immediately after traffic control devices have been placed, the detour shall be test driven by the Engineer and the Contractor's Superintendent. The test drive shall include approaches to the detour from each possible direction and traverse the full length of each detour route. The Contractor shall adjust and revise all traffic control devices as determined to be required by the test drive and the test drive shall be repeated, if determined necessary by the Engineer. The Contractor shall provide additional traffic control devices as required to maintain the flow of traffic throughout construction operation.
  2. *Diverting Bicycle and Pedestrian Traffic* – Whenever construction operations obstruct the flow of bicycle and pedestrian traffic or present a hazard to bicycles and pedestrians, the Contractor shall take appropriate action to protect and separate bicycles and pedestrians from the work area. Such action may include placement of barricades between bicycles and pedestrians and the work areas, placement of warning signs, and provisions utilizing personnel as required to protect and maintain access for bicycles and pedestrians as conditions warrant.
  3. *Diverting Vehicular Traffic* - Whenever construction operations obstruct the flow of vehicular traffic or present a hazard to vehicles operating in the vicinity of construction operations, the Contractor shall take appropriate action to warn, detour and otherwise protect approaching drivers and vehicles.
  4. *Flagmen* - The Contractor shall employ flagmen as required for each specific detour and at all locations where barricades and warning signs cannot control the movement of traffic. A warning sign shall be placed ahead of the flagman reading: "Flagman Ahead." The distance between the sign and the flagman should be based on the average traffic speed, allowing approximately 50 feet for each 10 miles per hour. During hours of darkness, flagman stations shall be illuminated such that the flagman will be clearly visible to approaching traffic. Lights for illuminating the flagman station shall receive favorable review by the Engineer. The flagman shall wear a red or orange warning garment when flagging. Flagmen shall be provided with approved red flags or STOP/SLOW hand paddles, and two-way radios for communication. When flagging during hours of darkness, the flagman shall signal with a red light or flare and shall have a belt and suspender harness fitted with reflectors or made from reflectorized cloth on the outside of the garment, unless the garment is well reflectorized in one of these ways.

5. Notice to Agencies - The Contractor shall notify the Engineer and all agencies having jurisdiction over the work, in writing, at least seventy-two (72) hours, excluding holidays and weekends, prior to instituting any lane closure or detour. At the end of each workday, the Contractor shall inform the Engineer, Police Department and Fire Departments of the status of all detours, lane restrictions, or road closures. The Contractor shall cooperate and coordinate with the various parties involved in the collection and removal of trash and garbage, the transit providers, the U.S. Postal Service, and others, as necessary, in order to maintain existing schedules and services.
  6. Emergency Vehicle Access Through Detours - During all detours and/or street closures the Contractor shall provide for the movement of emergency vehicles through the work area. It is essential that the Contractor's work and equipment does not impede emergency access.
  7. Night Detours – Except for the detour shown on the project plans, the Contractor shall not be permitted to maintain any lane closure or road closure during non-working hours without first obtaining written approval from the Engineer. During non-working hours the Contractor shall restore travel lanes to their original alignment and configuration by means of placing temporary asphalt pavement or bridging with steel plates. The Contractor shall place "ROUGH ROAD" signs conforming to the Manual of Uniform Traffic Control Devices at uneven temporary pavement or bridging locations. See General Provisions, Section 9.18 (b), "Trench Safety Requirements".
  8. Temporary Traffic Lanes – Temporary traffic lanes shall be at least 10 feet wide, or 11 feet wide around curves. Provide an additional two (2) feet of clearance from curbs. The length of temporary lanes should be limited to the area under construction and the distance necessary to divert traffic.
- d. *Lane Closure Restrictions* – See Special Provisions for project specific restrictions.
- e. *Parking Restrictions* - The Contractor shall post approved "No Parking" signs at all locations necessary to establish work areas and detour traffic. Signs shall read: "NO PARKING - CONSTRUCTION TOW - AWAY ZONE," show the actual day and hours of parking restriction and indicate the telephone number of the City's Police Department or agency having jurisdiction. Signs shall be placed at least forty hours (48) hours in advance of the restriction. The Engineer shall approve the location and duration of no parking limits and verify their placement. "No Parking" signs shall be removed when no work is under construction and must be reposted forty-eight (48) hours before the resumption of construction activities.

For any violation of "No Parking" signs by motorists, the Contractor shall contact and coordinate directly with the City's Police Department for removal of vehicles in accordance with the California Vehicle Code. The Contractor shall also coordinate with the Police Department directly for enforcement and towing of parked vehicles.

## **8.21 Safety**

In accordance with generally accepted construction practices and State Law, the Contractor shall be solely and completely responsible for conditions on the job site, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours, and shall encompass all persons, including City Staff and its Consultants.

The services of the Owner in conducting inspection or construction review of the Contractor's performance is not intended to include review of the adequacy of the Contractor's work methods, equipment, bracing, shoring or scaffolding, or safety measures, in, on, or near the construction site.

OSHA approved safety vests and hardhats shall be worn by the Contractor, all subcontractors and other personnel when working or present on the site.

The Contractor shall carefully instruct all personnel working in potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

All work and materials shall be in strict accordance with all applicable, City, County, State and Federal Rules, Regulations, and Codes, and attention is drawn to the requirements of CAL/OSHA. The Contractor shall be solely responsible for compliance with all City, County and State blasting requirements and for any damages caused by its operations. The Contractor shall be responsible for obtaining permits required by Section 6500 of the State Labor Code and Section 341 of Title 8 of the California Code of Regulations.

In accordance with Section 6705 of the State Labor Code, the Contractor shall submit to the Owner specific plans to show details of provisions for worker protection from caving ground. This in no way relieves the Contractor from the requirement of maintaining safety in all operations it or its subcontractor's performance. The detailed plan showing design of shoring, bracing, sloping or other provisions shall be prepared by a Civil or Structural Engineer registered in the State of California as required. Acceptance by the Owner only constitutes acknowledgment of the submission and does not constitute review or acceptance of the designs, design assumptions or criteria, completeness of submissions, applicability to areas of intended use, nor implementation of the plans, which are solely the responsibility of the Contractor and its registered engineer.

Notwithstanding any classifications relative to the Tunnel Safety Orders, work within confined spaces on this project is subject to the definitions and applicable provisions of Title 8, California Code of Regulations, Section 5156 et seq.

The Contractor shall so perform its work as not to expose personnel to, or to discharge into the atmosphere from any source whatever, smoke, dust, asbestos, toxic chemicals or other air contaminants in violation of the laws, rules, and regulations of the regulatory agencies having jurisdiction. All work involving exposure to hazardous materials shall be performed with protection of personnel in compliance with all applicable regulations and safety requirements.

Nothing in these Specifications is to be construed to permit work not conforming to governing codes. When Contract Documents differ from governing codes, the Contractor shall furnish and install the higher standards called for without extra charge.

### **8.22 Patent Fees or Royalties**

The patent fees or royalties on any patented article or process which may be furnished or used in the work shall be absorbed in the Contractor's bid. The Contractor shall indemnify, defend and hold the City harmless from any legal action that may be brought for infringement of patents.

### **8.23 Advertising**

The names of the Contractor or Subcontractors, with their addresses and the designation of their particular specialties, may be displayed at the job site on removable signs only if written approval is received from the Engineer. Commercial advertising material shall not be attached to, or painted on the surfaces of, any buildings, fences, canopies, or barricades.

### **8.24 Antitrust Claims**

Attention is directed to Public Contract Code, Section 7103.5 which provides: "In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec 15) or the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or subcontract. The assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties".

### **8.25 Audit and Examination of Records**

The City and entities and agencies designated by the City, shall have access to, and the right to audit and examine at no additional cost, all of the Contractor's project related data including but not limited to, books, estimates, records, contracts, bid cost data, Subcontractor and supplier job cost data, change orders, correspondence, instructions, drawings, receipts, vouchers, purchase orders, notes, computations, daily logs, and memoranda relating to the work. Pursuant to Government Code, Section 8546.7, the Contractor shall preserve all such records and will be subject to examination and audit by the State Auditor, at the request of the City, for a period of three (3) years after final payment under the Agreement.

### **8.26 Web-Based Construction Document Management**

The Contractor shall utilize e-Builder for submission of data and documents throughout the duration of the Contract, unless specified otherwise in the Contract Documents. e-Builder is a web-based construction management application hosted by e-Builder. It shall be the primary means of project information submission and management or as otherwise agreed upon with the Engineer. The Engineer will establish the Contractor's access to e-Builder by providing one license to Contractor personnel at City's cost. The contractor and users will be required to set up their computers/systems to use e-Builder in accordance to the e-Builder User Training Guider-2015. The City will provide one classroom training or a web-based seminar. A training session is 1 - 2 hours.

e-Builder is a web-based environment and therefore it is subject to the inherent speed and connectivity limitations of the Internet. The Contractor is responsible for its own connectivity to the Internet. e-Builder response time is dependent on the Contractor's equipment, including processor speed, Internet access speed, etc. and current traffic on the Internet. The City will not be liable for any delays associated from the usage of e-Builder including, but not limited to slow response time, down time periods, connectivity problems, or loss of information. The Contractor shall ensure connectivity to the e-Builder system whether at the home office or job site. Under no circumstances will usage of e-Builder be grounds for a time extension or cost adjustment to the Contract.

Data entered in a collaborative mode (entered with the intent to share as determined by permissions and workflows within the e-Builder system) by the Engineer and the Contractor will be jointly owned. The Contractor is responsible for managing, tracking, and documenting the Work to comply with the requirements of the Contract Documents. The City's acceptance via automated system notifications or audit logs extends only to the face value of the submitted documentation and does not constitute validation of the Contractor's submitted information.

While regular email will still be used for communication, e-Builder shall be utilized as much as possible in connection with all document and information management required by these Contract Documents. Contractor shall be responsible for scanning or otherwise converting to electronic format all project submittals and Contractor correspondence, drawings, sketches, etc., and uploading them to the e-Builder web site and shall be responsible for the validity of its information placed in e-Builder. The Contractor shall utilize the existing forms and processes in e-Builder to the maximum extent possible. If a required form does not exist in e-Builder, the Contractor shall include a form of its own or one provided by the Engineer (if available) as an attachment to a submittal or process. Documents and information to be submitted electronically include, but are not limited to:

1. Submittals using the Submittal Module
2. Requests for Information using the RFI process
3. Change Order Requests using RFQ and CCO processes
4. Progress payments requests using Pay Application process
5. Construction Closeout process
6. Compliance documentation (test reports, QA/QC reports, certifications)
7. Schedules and associated updates

The term “Copy” or “Copies” shall refer to electronic copies unless a hard copy is specified. Where a hard copy is specified, both electronic and paper versions shall be submitted.

Related Sections: Article 3.13, Submittals, General Provisions

## **SECTION 9 – MEASUREMENT AND PAYMENT**

### **9.01 Measurement of Quantities for Unit Price Work**

Materials and items of work which are to be paid for on the basis of measurement shall be measured in accordance with the methods stipulated in the particular sections of the Contract Documents involved.

Unless otherwise specified, quantities of work shall be determined from measurements or dimensions in the horizontal planes. Stationing shall be along the street centerline, lengths of sanitary sewers, storm drains and water lines shall be measured as the horizontal distances from center to center of structures, rounded to the nearest foot, and lengths of all return radii and curb data shall be measured along the face of curb.

Unless otherwise provided in the Contract Documents, volumetric quantities shall be the product of the mean area of vertical or horizontal sections and the intervening horizontal or vertical dimensions. Measurements shall be in accordance with U.S. Standard Measures. A pound is an avoirdupois pound. A ton is 2,000 pounds avoirdupois. The unit of liquid measure is the U.S. gallon.

When payment is to be made on the basis of weight, the weighing shall be done on certified platform scales or, when approved by the Engineer, on a completely automated weighing and recording system. The Contractor shall furnish the Engineer with duplicate licensed weighmaster's certificates showing the actual net weights. The City will accept the certificates as evidence of the weights delivered.

### **9.02 Bid Items**

Should any bid item be eliminated in its entirety, payment will be made to the Contractor for actual costs incurred, in connection with such eliminated contract work, and for costs incurred prior to the date of the Engineer's written notification eliminating such work. The actual costs to be paid to the Contractor shall be computed in the same manner as if the work were to be paid on a force account basis. No compensation will be made to the Contractor, in any case, for loss of anticipated profits. Increased or decreased scope involving a change order will be paid as stipulated in the change order.

The estimated value of work performed, for lump sum bids or lump sum bid items will be determined from the Schedule of Values. **The schedule of values shall be required by the Contractor for all lump sum bid items that breaks down the work into individual quantifiable components, plus quantities and unit prices of those components that when summed up equates to the lump sum amount of the bid item. Change order pricing for addition or deletion of those components shall be based on the lump sum breakdown contained in the Schedule of Values.** No progress payment will be made until a Schedule of Values has been submitted by the Contractor and accepted by the City. Progress payments for unit price bid items will be based on the estimated quantity of work performed during the month.

Elements of work shall be separated into groupings appropriate for the project. The Technical Specifications may be used as a guide for establishing these groupings. Within each grouping, work shall be itemized by readily measurable quantities of work complete in place. The Schedule of Values shall be broken down on the basis of each lump sum bid item. Move-on costs, bond and insurance costs, and submittal preparation costs can be included in the schedule of values under a separate mobilization line item. This line item shall not exceed 5% of the contract's value. Overhead and profit shall not be allowed as line items but shall be prorated over other items of work. In the event that the Schedule of Values is not accepted by the City, another Schedule of Values shall be submitted that is acceptable to the City. The Schedule of Values shall be submitted by the Contractor within 14 days of Notice to Proceed.

The estimated value of work performed, for lump sum bids or lump sum bid items will be determined from the schedule of values, to be prepared by the Contractor and presented at the preconstruction meeting. Elements of work on the schedule of values shall be separated into groupings appropriate for the project. The Technical Specifications may be used as a guide for establishing these groupings. Move-in costs, bond and insurance costs, and submittal preparation costs can be included in the schedule of values

under a separate mobilization line item. This line item shall not exceed 5% of the contract's value. Overhead and profit shall not be allowed as a line item but shall be prorated over other items of work.

### **9.03 Bid Quantities**

Payments to the Contractor will be made only for the actual quantities of contract items constructed in accordance with the plans and specifications. Payment will not be made for materials wasted or disposed of in a manner not called for under the contract. This includes rejected material not unloaded from vehicles, material rejected after it has been placed and material placed outside of the plan lines. Unless otherwise provided, no payment will be made for materials delivered to the site but not incorporated in the work. Such quantities will not be included in the final pay quantities. No compensation will be allowed for the disposal of rejected or excess material.

When the estimated quantity for a specific portion of work is designated on the Bid Schedule as a "Final Pay Quantity", the estimated quantity specified shall be the final quantity for which payment for such specified portion of the work will be made, regardless of the actual quantity constructed, unless the dimensions of said portions of the work shown on the plans are revised by the Engineer. If such dimensions are revised and such revisions result in an increase or decrease in the quantity of such work, the final quantity for payment will be revised by the amount represented by the change. The estimated quantity for any portion of the work designated as a Final Pay Quantity shall be considered as approximate only and no guarantee is made that the quantity, which can be determined by computations, based upon the details and dimensions shown on the plans, will equal the estimated quantity. No allowance will be made in the event that the quantities based upon computations do not equal the estimated quantities. Final pay quantities will be designated on the Bid Schedule with the letter (F) and shall only apply to the corresponding portions of work specifically designated on the plans. Any portion of work not designated as a final pay quantity will be measured and paid for as specified under other provisions of the Contract Documents.

### **9.04 Progress Payments**

On or about the 25<sup>th</sup> day of each month may be designated as the date which would terminate each working month for the purpose of making progress payments. In the event that this estimate cannot be mutually agreed, the City will determine the value for progress payment purposes.

The Contractor's request for a progress payment shall be submitted via e-Builder. Request for Progress Payment form (PAS Form 051) enclosed in Appendix A of these General Provisions shall be attached to the process. The Request for Progress Payment form shall be complete and properly executed by the contractor, and have, as attachments, the items listed on the form.

The Contractor shall, on the date established, prepare and submit a progress estimate to the City for work accomplished during the previous working month, based on the various contract bid items and the unit bid prices. Invoices shall include amounts previously paid, itemized retention and any deductions or additions authorized by change order. Consultation with the Engineer may be necessary to determine the amount of work accomplished.

The first progress payment will not be made until the following submittals **and documents** have been provided and accepted: list and schedule of submittals, baseline construction schedule, schedule of values, SWPPP, and **certified payroll submitted plus uploaded onto the DIR online payroll system covering the work pay period**. Subsequent progress payment requests will not be accepted unless accompanied by the progress payment cover letter, an updated baseline or revised schedule, a certification that the record drawings have been updated as of the date of the invoice, **and certified payroll covering the work pay period**.

Upon receipt of a progress payment request, the City shall, within seven (7) days, determine if the request is proper, and if disputed the City will return the progress payment to the Contractor along with a written document setting forth the progress payment request's shortcomings. Following receipt of an

undisputed and properly submitted progress payment request, the City shall make payment within thirty (30) days.

Contractor may request partial payment for materials delivered to the site but not yet incorporated into the work (materials on hand). To receive consideration for payment of materials on hand, the Contractor shall provide the Engineer with a list of such materials at least five (5) working days prior to submitting the monthly estimate of amount earned for work completed. At the Engineer's sole discretion, up to seventy-

five percent (75%) of the estimated value of materials on hand may be considered for payment, subject to the following:

- a. Only materials which have received favorable review of shop drawings will qualify.
- b. Eligible materials must be delivered and properly stored, protected, and maintained in a manner favorably reviewed by the Engineer, at the job site or at a bonded warehouse.
- c. The Contractor's actual net cost for the materials must be supported by paid invoices to suppliers or other documentation requested by the Engineer.
- d. Materials delivered to the site less than thirty (30) days prior to their scheduled incorporation in the work shall not qualify.
- e. Partial payments for materials on hand shall not be deemed to be final payment for the material nor relieve the Contractor's obligations under the Contract.
- f. Partial payments for materials on hand shall be subject to retention.
- g. City reserves and shall have the right to withhold payment for any equipment and/or specifically fabricated materials that, in the sole judgment of City, is not adequately and properly protected against weather and/or damage, prior to or following incorporation into the Work.

From each progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder of the amount due, less the amount of all previous payment will be paid to the Contractor provided all work invoiced has been completed and approved by the Engineer.

The Engineer may withhold or nullify, the whole or any part of any payment to such extent as may be necessary to protect the City from loss on account of any of the following:

- a. Defective or vandalized work not remedied,
- b. Damage to the City or another Contractor,
- c. Stop notices, or failure of the Contractor to make payments properly to subcontractors or laborers or suppliers, in which case 125% of the stop notice amount shall be withheld until a release form is received,
- d. Failure of Contractor to maintain, update and submit record documents, schedules or other submittals as required by the Contract Documents,
- e. Any other failure of Contractor to perform its obligations under the Contract Documents.

The Contractor may elect to receive one hundred percent (100%) of payments due under the contract from time to time, without retention of any portion of the payment by the City, by depositing and maintaining securities of a value equivalent to the retention amount with the City in accordance with the provisions of Public Contract Code, Section 22300. Such securities, if deposited by the Contractor, shall be valued by the City's Finance Director, whose decision on valuation of the securities shall be final.

Contractor warrants that, upon submittal of an application for payment, all work for which payment has been previously issued by the City and received by the Contractor, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to work.

The payment of progress payments by the City shall not be construed as an absolute acceptance of the work done up to the time of such payments and shall not constitute acceptance of defective work.

### **9.05 Final Payment**

The City shall, prior to final acceptance, provide the Contractor with a copy of the final quantities for the various contract bid items and a summary of contract change orders for the Contractor's review. All prior payments shall be subject to correction in determining the total contract sum. The Contractor shall reply promptly in writing, to indicate either the Contractor's concurrence or an explanation of possible discrepancies in the total contract sum.

The project will not be submitted to the Director of Public Works for acceptance until the Engineer and the Contractor concur with the totals of all quantities, costs, contract change orders and the total contract sum. Following concurrence, a semi-final payment will be made to the Contractor after deducting all previous payments and all amounts to be retained under the provisions of the contract. The retention payment shall be due and payable as a final payment after the expiration of thirty-five (35) days following the date of recording at the County after final acceptance of the work.

If within the time fixed by law, a properly executed notice to stop payment is filed with the City, due to Contractor's failure to pay for labor or materials used in the work, all money due for such labor or materials will be withheld from payment to the Contractor in accordance with applicable laws.

If releases are required, the Contractor shall pay or cause to be paid to Subcontractors the amount stated in the conditional releases within five (5) days after receipt of the semi-final payment and shall promptly thereafter furnish evidence of such payment to the City.

The securities deposited by the Contractor will be released, providing that the following requirements of the contract have been fulfilled:

- a. Satisfactory completion of all construction work and written acceptance of said work by the City;
- b. The submission by the Contractor to the Engineer of all required stop notice releases, submittals, written guarantees, warranties, operating manuals, and other project related documentation;
- c. The return to the Engineer of all drawings and written specifications loaned to the Contractor during the construction period.
- d. The submission by the Contractor to the Engineer of record documents and a set of red-lined drawings showing the revisions to the original set of drawings which reflect the actual construction of the project for preparation of "Record Drawings".

The Contractor agrees that the payment of the final amount due under the contract shall release the City of East Palo Alto from any and all claims or liability on account of all work performed under the contract, except those items previously made in writing and identified by the Contractor as unsettled. Release of the final payment by the City shall not be construed as an acceptance of any defective work or acceptance of improper materials.

### **9.06 Claims**

The term “Claim” shall mean a written demand or assertion by the Contractor seeking, as a matter of asserted right, adjustment in the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, or determination of other disputes or matters in question between the City and Contractor arising out of or related to the Contract Documents or the performance of the work, including claims alleging an error or omission.

A notice of potential claim must be stated with specificity, including identification of the event giving rise to potential claim, the date of the event, and the asserted effect on contract sum and contract time. The notice of potential claim shall include adequate supporting data. Adequate supporting data for a potential claim for an adjustment of the contract time shall include scheduling data demonstrating the impact of the event on the completion of the work. Adequate supporting data for a potential claim for an adjustment of the contract sum shall include a detailed cost breakdown of the items allowed, isolating labor, material, and equipment costs, and providing detailed quantities and unit prices for changed work. If the exact amount of a potential claim is not ascertainable at the time such potential claim is made, the supporting data currently available shall be submitted. Supplemental data supporting the exact amount of the potential claim shall be submitted as soon as available.

Notwithstanding the making of any potential claim or the existence of any dispute regarding any potential claim, unless otherwise directed by the Engineer, the Contractor shall not cause any delay, cessation, or termination in the performance of the work, including portions of the work pertaining to a potential claim.

### **9.07 Time Limit on Potential Claims**

Contractor shall submit any and all notices of potential claims, together with adequate supporting data to the Engineer as soon as possible but not later than ten (10) working days after occurrence of the event giving rise to the claim, or the date the Contractor first recognized, or reasonably should have recognized, the condition giving rise to the claim, whichever is earlier. Contractor hereby expressly waives all claims not made within this time limit.

Contractor is expressly barred from asserting any potential claims of which the Contractor was aware, whether or not the exact amount of such potential claims was ascertainable, that is not submitted to the Engineer prior to the Contractor proceeding with the work.

### **9.08 City Response to Potential Claims**

The Engineer shall promptly review potential claims. If additional supporting data is deemed necessary, the Engineer shall request such additional data within ten (10) working days after receipt of the potential claim. The Contractor shall furnish such additional data no later than ten (10) working days after receipt of the City’s request. The Engineer shall render a decision promptly, but in any event, within thirty (30) working days after the receipt of the potential claim or the receipt of additional supporting data. If the amount of the claim is in excess of \$50,000, the aforesaid thirty (30) working day period shall be sixty (60) working days. Failure of the Engineer to render a decision within the aforesaid thirty (30) or sixty (60) working day period shall be deemed a decision denying the claim and the last day of such period shall be the date of such decision. The decision of the Engineer shall be final and binding unless appealed in accordance with the General Provisions, Section 9.09, “Appeal of the Engineer’s Decision”.

### **9.09 Appeal of Engineer’s Decision**

If Contractor disputes the Engineer’s decision of a claim, the Contractor shall, within thirty (30) calendar days of the decision, make a written appeal of the decision to the Engineer. The written appeal shall include all supporting data upon which the Contractor requests the City to modify its decision, including all documentation transmitted between the Contractor and the Engineer on the underlying potential claim. The Engineer shall make a good faith effort to resolve the potential claim prior to final completion of the Project. In the event the potential claim is not resolved prior to final completion, the Contractor’s potential claim shall be heard by the Director of Public Works prior to recommending final acceptance of the Contract. The Contractor’s administrative remedies under the Contract Documents shall be exhausted

after the decision of the Director of Public Works is rendered. In case of disagreement with the decision of the Director of Public Works, the Contractor may pursue the resolution of the dispute by presenting a formal claim to the City.

## SECTION 10 – GUARANTEE

### **10.01 Warranties**

The Contractor shall be held responsible for and shall make good any defects through faulty or improper workmanship or through defective materials, arising or discovered, in any part of this work within the time specified (stated in the Special Provisions) after the completion and acceptance of the entire project.

- a. *Warranty Form* – Contractor warranties shall be on the Contractor's own letterhead, addressed to the City, and shall in all cases be furnished to the City in duplicate. In addition, furnish City with original copies of all manufacturer's warranties.
- b. *Standard Product Warranties* – are pre-printed written warranties published by individual manufacturers for particular products and are specifically endorsed by the manufacturer to the City. Contractor shall provide to the City the Manufacturer's Standard written warranties of all the equipment installed for the project.
- c. *Special Warranties* – are written warranties required by or incorporated in Contract Documents, to extend time limits provided by standard warranties or to provide greater rights for the City. Special warranties for products and installations that are specified to be warranted, shall be provided. When a special warranty is to be executed by the Contractor, or the Contractor and a Subcontractor, or the Contractor and a Supplier or Manufacturer, the Contractor shall prepare a written document that contains appropriate terms and identification, ready for execution by the required parties. Submit a draft to the City, for approval, prior to final execution.
- d. *Disclaimers and Limitations* – Manufacturer's disclaimers and limitations on product warranties do not relieve the Contractor from providing the specified warranty on the work that incorporates the products. Nor does it relieve suppliers, manufacturers, and subcontractors required to countersign special warranties with the Contractor, from meeting specified warranty obligations.
- e. *Rejection of Warranties* – The City reserves the right to reject warranties and to limit selections to products with warranties not in conflict with requirements of the Contract Documents. The City reserves the right to refuse to accept work where a special warranty, or similar commitment is required, until evidence is presented that entities required to countersign commitments are willing to do so.
- f. *Related Damages and Losses* – When correcting warranted work that has failed, the contractor shall remove and replace other work that has been damaged as a result of such failure, or that which must be removed and replaced to provide access for correction of the warranted work.
- g. *Reinstatement of Warranty* – When work covered by a warranty has failed and been corrected, the warranty shall be reinstated by written endorsement. The reinstated warranty shall be equal to the original warranty with an equitable adjustment for time.
- h. *Replacement Cost* – On determination that work covered by a warranty has failed, the contractor shall replace or rebuild the work to an acceptable condition complying with requirements of the Contract Documents. The Contractor is responsible for the cost of replacing or rebuilding defective work regardless of whether the City has benefited from use of the work through part of its useful service life.
- i. *City's Recourse* – Written warranties made to the City are in addition to implied warranties, and shall not limit duties, obligations, rights and remedies otherwise available under the law, nor shall warranty periods be interpreted as limitations on time in which the City can enforce such other duties, obligations, rights, or remedies.

- j. *Notice to Perform Warranty Work* – The Contractor is required to repair or replace warranted work within 10 days of receiving written notice from the City of a failure of warranted work. If the required repair or replacement work has not been performed by the Contractor within the time allowed, the City may, at its sole discretion, undertake appropriate warranty work without further notice to the Contractor.

In the event that the nature of the failed warranted work is such that further damage will occur, or there is a danger to life or property, the City may undertake immediate repair or replacement without notice to the Contractor.

The cost of repair work undertaken by the City under these provisions shall be recoverable from the Contractor.

### **10.02 Contractor's Guarantee**

Prior to final acceptance, the Contractor shall warrant and guarantee to the City that all work is in accordance with the Contract Documents and is not defective.

The guarantee shall be accompanied by a warranty bond for ten percent (10%) of the final contract sum, which shall warrant the quality of the work for a period of one (1) year after acceptance. The guarantee and warranty bond shall be in accordance with the Agreement Forms furnished in the Contract Documents.

### **10.03 Correction of Defective Work During the Guarantee Period**

If within one (1) year after the date of acceptance, or such longer period of time as may be prescribed by laws or regulations or by the terms of any applicable special guarantee required by the Contract Documents, any work is found to be defective, the Contractor shall promptly without cost to the City and in accordance with the City's written instructions, either correct such defective work or if it has been rejected by the City, remove it from the site and replace it with non-defective work.

If the Contractor does not promptly comply with the terms of such instructions within ten (10) working days after written demand by the City, the City may have the defective work corrected. The City may also correct defective work immediately in cases of emergency where delay would cause serious risk of loss or damage. All direct, indirect and consequential costs of correcting defective work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) shall be absorbed by the Contractor.

The Contractor shall remove from the Project site portions of the work and materials which are not in accordance with the Contract Documents and which are neither corrected by the Contractor nor accepted by the City.

## APPENDIX A – GENERAL PROVISION FORMS

<b>Form Title</b>	<b>General Provisions Reference Section</b>
Three Week Look Ahead Schedule	7.05
Daily Extra Work Report (SAMPLE)	4.06
Request For Progress Payment	9.04
Contractor's Certification of Completion	7.19

**City of East Palo Alto, 3-Week Look Ahead Schedule**  
**Project's Title,**  
**Contractor's Name**

Task No.	Work To Be Performed	Comments	Month																														Mo	
			5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	1	2				
			M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S				
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# REQUEST FOR PROGRESS PAYMENT

No. \_\_\_\_\_

Project \_\_\_\_\_

Project No. \_\_\_\_\_

Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

To: Director of Public Works  
City of East Palo Alto  
1960 Tate Street  
East Palo Alto, CA 94303

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: Construction Contract Administrator

A progress payment is requested in accordance with the following:

For the first Progress Payment

This request for a progress payment has the following attached:

- Invoice (Invoice No. \_\_\_\_\_ dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_)
- Schedule of Values analysis supporting the invoice
- Certified Payroll

*and I certify that the following have been submitted and approved by the City:*

- Schedule of Submittals required
- Baseline Construction Schedule
- Schedule of Values (if applicable)
- Storm Water Pollution Prevention Plan

For the second and subsequent Progress Payment

This request for a progress payment has the following attached:

- Invoice (Invoice No. \_\_\_\_\_ dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_)
- Schedule of Values analysis supporting the invoice
- Certified Payroll
- An Updated  Baseline ( or Revised-No. \_\_\_\_\_) Construction Schedule dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_, updated to \_\_\_\_ / \_\_\_\_ / \_\_\_\_

and I certify that the Record Drawings have been updated to incorporate all field changes and extra/changed work as of \_\_\_\_ / \_\_\_\_ / \_\_\_\_\_. Furthermore, I have sought and obtained the assigned City Inspector's review of the status of the Record Drawings as evidenced by the Inspector's signature of acknowledgment on this Request.

\_\_\_\_\_  
City Inspector's Signature

Dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_

\_\_\_\_\_  
Contractor's Signature

# CONTRACTOR'S CERTIFICATION OF COMPLETION

**Project** \_\_\_\_\_ **Project No.** \_\_\_\_\_ **Date** \_\_\_ / \_\_\_ / \_\_\_

**To:** Director of Public Works  
City of East Palo Alto  
1960 Tate Street  
East Palo Alto, CA 94303

**From:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Attn:** Construction Contract Administrator

This is to certify that I, \_\_\_\_\_  
am an authorized official of \_\_\_\_\_  
working in the capacity of \_\_\_\_\_

and have been properly authorized by the firm or corporation to sign the following statements pertaining to the subject contract:

I know of my own personal knowledge, and do hereby certify, that the work of the contract described above has been performed, and materials used and installed in every particular, in accordance with, and in conformity to, the contract drawings and specifications.

The contract work is now complete in all parts and requirements, and ready for your final inspection.

I understand that neither the determination by the Owner that the work is complete, nor the acceptance thereof by the City, shall operate as a bar to claim against the Contractor under the terms of the guarantee provisions of the contract documents.

\_\_\_\_\_  
**Contractor's Signature**

\_\_\_\_\_  
**Title**