

OFFICE OF THE CITY ENGINEER

SEPTEMBER 1997
(AS AMENDED)

GENERAL CONDITIONS
FOR
CITY OF ST. HELENA
CONSTRUCTION PROJECTS

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FOR
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CITY OF ST. HELENA GENERAL CONDITIONS

SECTION A - DEFINITIONS

A-01 Definitions.

Whenever any word or expression, defined in this Section, occurs in the Contract documents, it shall have and is mutually understood to have the following meaning:

- a. "CITY" shall mean the City of St. Helena, Napa County, California acting through the CITY COUNCIL of the CITY OF ST. HELENA or any other Board, body, official or officials to which or to whom the power belonging to the CITY COUNCIL shall by virtue of any act or acts, hereafter pass or be held to appertain.
- b. "OWNER" shall be equivalent to "City" as defined above in A.01.a.
- c. "COUNTY" shall mean the County of Napa, Napa County, California.
- d. "ENGINEER" shall mean the City Engineer duly and officially appointed by the City to provide general administration of the Contract, acting personally or through agents or assistants duly authorized by him, such agents or assistants acting within the scope of the particular duties entrusted to them.
- e. "INSPECTOR" shall mean the engineering or technical inspector duly authorized or appointed by the Engineer, limited to the particular duties entrusted to him.
- f. "CONTRACTOR" shall mean the party entering into Contract with the City for the performance of work covered by this Contract, and its authorized agents or representatives.
- g. "BIDDER" shall mean any individual, firm, partnership, corporation, or combination thereof, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.
- h. "DATE OF SIGNING OF CONTRACT" or words equivalent thereto, shall mean the date upon which the Contract, with the signature of the Contractor affixed, together with the prescribed bonds shall be or shall have been delivered to the City or its duly authorized representatives.
- i. "DAY OR DAYS" unless herein otherwise expressly defined, shall mean a calendar day or days of twenty-four (24) hours each.
- j. "THE WORK" or "THE PROJECT" shall mean the work to be done under this Contract, unless some other meaning is indicated by the context.

- k. "CONTRACT DRAWINGS" or "DRAWINGS" or "PLANS" shall mean, and include all drawings which may have been prepared by or in behalf of the City as a basis for proposals and subsequent construction of the project, when duly signed and made a part of this Contract by incorporation or reference; all drawings submitted in pursuance of the terms of the contract by the successful Bidder with its proposal or submitted by the Contractor to the City if approved by the Engineer during the progress of the work as provided for herein.
- l. "SPECIFICATIONS" include the following:
- (1) The Notice to Bidders
 - (2) The Form of Proposal
 - (3) The Agreement Form
 - (4) General, Special, and Technical Conditions
 - (5) Addendum.
- m. "AS SHOWN", "AS INDICATED", "AS DETAILED", or words of similar import shall be understood to make reference to the drawings accompanying these specifications unless stated otherwise. Where "as directed", "as permitted", "as required", "approved", or words of similar import are used, it shall be understood that the direction, requirements, permission, approval, or acceptance of the Engineer is intended unless stated otherwise. As used herein, "provide" shall be understood to mean "provide complete in place", that is, "furnish and install". "Shall" is mandatory; "may" is permissive.
- n. "NUMBER" the singular number includes the plural and the plural the singular.
- o. "GENDER" the masculine gender includes the feminine and neuter.
- p. "STATE SPECIFICATIONS" where referred to herein shall mean the Standard Specifications of the State of California, Department of Transportation, as currently approved and effective. Where any provisions of the City specifications conflict with those of the State Specifications, the City specifications shall prevail.
- q. "CONTRACT" includes all the Contract documents, to wit:
- (1) The Notice to Bidders
 - (2) The Accepted Proposal
 - (3) The Executed Agreement
 - (4) General Conditions, Special Conditions, Technical Conditions and Addenda
 - (5) The Contract Drawings
 - (6) The Bonds
- r. "ABBREVIATIONS" whenever in these specifications, or in any documents or instruments where these specifications govern, the following abbreviations are used, the intent and meaning shall be as follows:
- AASHO - American Association of State Highway Officials

ACI - American Concrete Institute
AREA - American Railway Engineering Association
ASA - American Standards Association
ASCE - American Society of Civil Engineers
ASME - American Society of Mechanical Engineers
ASTM - American Society for Testing Materials
AWPA - American Wood Preservers Association
AWS - American Welding Society
AWWA - American Water Works Association
Fed. Spec. - Federal Specification
NEMA - National Electrical Manufacturers Association

SECTION B - PROPOSAL REQUIREMENTS AND CONDITIONS

- B-01 Examination of Drawings, Specifications, and Site of Work. The Bidder shall examine carefully the site of the work contemplated and the proposal, drawings, specifications, and contract forms therefor. It will be assumed that the Bidder has investigated and is aware of the conditions to be encountered, and the character, quality, and requirements of these drawings and specifications.
- B-02 Proposal. Proposal shall be made on the blank form prepared by the City in writing and in figures, and shall be signed by the Bidder or its authorized representatives, with its address. If the proposal is made by an individual, his or her name and post office address must be shown; if made by a firm or partnership, the signature of one or both of the partners must be shown; if under the laws of which the corporation is chartered, or organized, the name of the corporation, and the title of the person who signs on behalf of the corporation. Each proposal shall be enclosed in a sealed envelope titled and endorsed in the same manner as the proposal. Bidders are warned against making erasures or alterations of any kind, and proposals which contain omissions, erasures, conditions, alterations, or additions not called for, may be rejected.
- B-03 Withdrawal of Proposals. Any proposal may be withdrawn at any time prior to the hour fixed in the Notice to Bidders for the opening of Bids, provided that a request in writing, executed by the Bidder or its duly authorized representative, for the withdrawal of such Bid is filed with the City Clerk. The withdrawal of a bid will not prejudice the right of a Bidder to file a new proposal within the time prescribed. After openings of Bids, proposals may not be withdrawn for a period of thirty-five (35) days.
- B-04 Public Opening of Proposals. Proposals will be opened and read publicly at the time and place indicated in the Notice to Bidders. Bidders or their agents are invited to be present.
- B-05 Proposal Guaranty. Each proposal shall be accompanied by a bank certified or bank cashier's check or a satisfactory corporate surety Bidder's Bond made payable to the City for an amount equal to at least ten percent (10%) of the amount of the base bid and no bid shall be considered unless such certified check, cashier's check, or Bidder's Bond is enclosed therewith.

- B-06 Qualification of Bidders. Each Bidder shall be licensed in accordance with the provisions of Chapter 9, Division 3 of the California Business and Professions Code, and shall be skilled and regularly engaged in the general class or type of work called for under this Contract. Prior to award and if requested, a Qualification Questionnaire shall be submitted by each Bidder setting forth its experience and business standing. It is the intention of the City to award a Contract only to a Bidder who furnishes satisfactory evidence that it has the requisite experience and ability and that it has sufficient capital, facilities, and plant to enable it to prosecute the work successfully and promptly, and to complete it within the time named in the Contract. To determine the degree of responsibility to be credited to a Bidder, the City will consider any relevant evidence that the Bidder or personnel guaranteed to be employed in responsible charge of the work has satisfactorily performed other Contracts of like nature and magnitude of comparable difficulty at similar rates of progress.
- B-07 Disqualification of Bidders. More than one proposal from an individual, firm or partnership, a corporation or an association under the same or different names, will not be considered. Reasonable ground for believing that any Bidder is interested in more than one proposal for the work will cause the rejection of all proposals in which such Bidder is interested. If there is reason to believe that collusion exists among the Bidders, none of the participants in such collusion will be considered. Proposals in which the prices obviously are unbalanced may be rejected.
- B-08 List of Subcontractors. In accordance with Chapter 2, Division 5, Title 1 of the Government Code of the State of California, each proposal shall have listed the name and address of each subcontractor to whom the Bidder proposes to sublet portions of the work in excess of 1/2 of 1% of the prime Contractor's total bid, or, in the case of streets or highway, \$10,000, whichever is greater. A subcontractor is defined as one who contracts with the Contractor to furnish materials and labor, or labor only, for performance of work at the building site. Subcontractors shall be listed on the form provided herein, together with the type and extent of work proposed to be subcontracted to each. Only one subcontractor shall be listed for each portion of the work.
- B-09 Addenda. If any person contemplating submitting a Bid for the proposed Contract is in doubt as to the true meaning of any part of the drawings, specifications, or other proposed Contract documents, or finds discrepancies in, or omissions from the drawings or specifications, he or she may refer the matter to the Engineer for an interpretation or correction thereof. Any interpretation or correction of the proposed documents will be made only by Addendum duly issued and a copy of such Addendum will be mailed or delivered to each person receiving a set of such documents. The City will not be responsible for any other explanations or interpretations of the proposed documents and oral and other interpretations or clarifications will be without legal effect.

Any Addenda issued during the time of bidding or forming a part of the documents furnished the Bidder for the preparation of its Bid, shall be covered in the Bid and shall be made part of the Contract. All Addenda shall be attached to the inside rear cover of the specifications.

SECTION C - AWARD AND EXECUTION OF CONTRACT

- C-01 Award of Contract. Award of the Contract, if it be awarded, will be to the lowest responsible Bidder whose proposal complies with all the specified requirements and who qualifies in accordance with Paragraph B-06 hereof. The award, if made, will be made within thirty-five (35) days after opening of the Bids. The City reserves the right to reject any and all proposals.
- C-02 Return of Proposal Guaranties. Within fifteen (15) days after the award of the Contract, the City will return the proposal guaranties accompanying such of the proposals as are not to be considered in making the award. All other proposal guaranties will be held until the Contract has been fully executed, after which they will be returned to the respective Bidders whose proposal they accompany.
- C-03 Execution of Contract. The Contract agreement and the Drawings shall be executed in quadruplicate by the successful Bidder and returned, together with the Contract Bonds and evidence of required insurance within ten (10) calendar days after the date of the Notice of Award of the Contract. After execution by the City, one copy shall be filed with the City Clerk, two copies shall be delivered to the Engineer, and one copy shall be returned to the Contractor. If the Bidder fails or refuses to enter into a Contract to do the work, then the proposal guaranty accompanying the Bid shall be forfeited to the City.

SECTION D - GENERAL PROVISIONS

- D-01 Effect of Inspection and Payments. Neither the inspection by the Engineer nor by an Inspector, nor any order, measurement, approved modification, certificate, or payment of money, nor acceptance of any part or whole of the work nor any extension of time nor any possession by the City or its agents, shall operate as a waiver of any provision of the Contract or of any power or authority reserved therein to the City or any right to damage thereunder; nor shall the waiver of any breach of this Contract be held to be a waiver of any or subsequent breach. All remedies shall be taken and construed as cumulative.
- D-02 Effect of Extension of Time. The granting of any extension of time on account of delays which in the judgment of the City are avoidable delays shall in no way operate as a waiver on the part of the City of its right under this Contract.
- D-03 Extra Work. If extra work orders are given in accordance with the provisions of this contract, such work shall be considered a part hereof and subject to each and all of its terms and requirements.
- D-04 Assignment of Contract. The Contractor shall perform with its own organization and with the assistance of workers under its immediate superintendence work of a value not less than fifty percent (50%) of the value of all work embraced in the Contract, unless authorized by the City. The Contractor shall not assign the Contract or sublet it in whole or in part, nor shall it assign any monies due to it hereunder, without the previous written consent of the City. Assigning or subletting the Contract shall not relieve the Contractor or its surety from any Contract obligations.

- D-05 Subcontractors. Each subcontractor in the performance of its subcontract shall deal solely with the prime Contractor and shall not deal directly with the City or its Engineer or Inspector. Before any work is started on a subcontract, the Contractor shall file with the Engineer a written statement showing the work to be subcontracted, giving the names of the subcontractors and the description of each portion of the work to be so subcontracted.
- D-06 Interpretation of Specifications and Drawings. The specifications and the Contract drawings are intended to be explanatory of each other. Any work indicated in the Contract drawings and not in the specifications, or vice versa, is to be executed as if indicated in both. All work shown on the Contract drawings, the dimensions of which are not figured, shall be accurately followed to the scale to which the drawings are made, but figured dimensions are in all cases to be followed, where given, though they differ from scaled measurements. Large scale drawings shall be followed in preference to small scale drawings. Should it appear that the work to be done or any of the matters relative thereto, are not sufficiently detailed or explained in the Contract documents, including the Contract drawings, the Contractor shall apply to the Engineer for such further explanations as may be necessary, and shall conform thereto as part of the Contract. In the event of any doubt or question arising respecting the true meaning of the specifications, reference shall be made to the Engineer and his or her decision thereon shall be final. In case of conflict between the drawings and specifications, the specifications shall govern unless the intent is reasonably obvious.
- D-07 Titles for Reference Only. The subheadings and titles appearing on the plans, and in these specifications are inserted for convenience of reference only, and shall not be taken or considered as being a part thereof, or as having any bearing on the interpretation hereof.
- D-08 Plans and Specifications Furnished. The Contractor will be furnished free of charge all copies of plans and specifications reasonably necessary for the execution of the work. All drawings, specifications and copies thereof furnished the Contractor shall not be reused on other work, and, with the exception of the signed Contract, all sets are to be returned to the City at the completion of the work.
- D-09 Shop Drawings and Manuals. The Contractor shall submit shop and/or manufacturer's drawings for approval of the Engineer for all mechanical and electrical equipment, reinforcing steel, fabricated steel items, and special piping details. Five (5) copies of such drawings or diagrammatic layouts shall be submitted, two (2) of which will be returned with approval or notations of necessary changes. If the Contractor desires more than two (2) copies returned, it shall submit additional copies. Fabrication or other work performed in advance of approval shall be done entirely at the Contractor's risk. The Contractor shall furnish three (3) complete sets of manufacturer's installation, lubrication and operating instruction manuals and spare parts lists for each piece of mechanical and electrical equipment and shall deliver the three (3) bound copies to the Engineer prior to acceptance of the completed project.
- D-10 Liability of City Officials. The City and its officers, employees, agents, and engineers engaged for design shall not in any manner be answerable or accountable for any loss or

damage that may happen to the work or any part thereof, or for any of the materials or other things used or employed in finishing and completing the work, or for any injury to any person or persons, either workmen or the public, or for damage to adjoining property from any cause, which might have been prevented by the Contractor or its workers, or by anyone employed by it; against all of which injuries or damages to persons and property the Contractor, having control over such work, must properly guard and make good all damages from whatever cause, being strictly responsible.

- D-11 Precedence of Special Conditions. Insofar as the Special Conditions modify the General Conditions, the Special Conditions shall prevail.
- D-12 Assignment of Unfair Business Practice Claims. In entering into this Contract, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action Contractor may have under Section 4 of the Clayton Act (15 United States Code Section 15) or under 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 Contract. This assignment shall be made and become effective at the time the City tenders final payment to Contractor, without further acknowledgment by the parties.
- D-13 Resolution of Claims. Each and all of the provisions of Public Contract Code Sections 20104-20104.6, inclusive, relating to resolution of claims of \$375,000 or less shall be applicable as set forth therein. The provisions of Public Contract Code Sections 20104 and 20104.2 subsections (a), (c), (d), (e) and (f) shall be applicable to the resolution of claims greater than \$375,000. These statutes by this reference and the provisions included therein are incorporated in the Contract by reference as though set forth at length.

SECTION E - BONDS

- E-01 Faithful Performance Bond. As a part of the execution of this Contract, the Contractor shall furnish a Bond of a surety company acceptable to the City and authorized to do business in the State of California, conditioned upon the faithful performance of all covenants and stipulations under this Contract. The amount of the Bond shall be one hundred percent (100%) of the total Contract price, as this sum is set forth in the agreement.
- E-02 Material and Labor Bond. As a part of the execution of this Contract, the Contractor shall furnish a Bond of a surety company acceptable to the City and authorized to do business in the State of California in a sum not less than one hundred percent (100%) of the total Contract price, as this sum is set forth in the agreement, for the payment in full of all persons, companies, or corporations who perform labor upon or furnish materials to be used in the work under this Contract, in accordance with the provisions of Sections 4200 and 4208, inclusive (Chapter 3, Division 5) of the Government Code of the State of California, and any acts amendatory thereof.

- E-03 Defective Material and Workmanship Bond. As a condition precedent to final payment under this Contract, the Contractor shall furnish a Bond of surety company acceptable to the City and authorized to do business in the State of California , in an amount equal to twenty percent (20%) of the total contract price, which Bond shall be for a period of one (1) year after the completion and acceptance of the work, to protect the City against the results of defective materials, workmanship, and equipment during that time, and to guaranty the Contractor's responsibility under Paragraph G-29.
- E-04 Notification of Surety Companies. The surety companies shall familiarize themselves with all of the conditions and provisions of this Contract, and they waive the right of special notification of any change or modification of this Contract or of extension of time, or of decreased or increased work, or of the cancellation of the Contract, or of any other act or acts by the City or its authorized agents, under the terms of this Contract; and failure to so notify the aforesaid surety companies of changes shall in no way relieve the surety companies of their obligation under this Contract.

SECTION F - INSURANCE

- F-01 Insurance Required. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.
- F-02 Minimum Scope of Insurance. Coverage shall be at least as broad as:
1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001). This insurance must include coverage for contractual liability assumed by the Contractor under Paragraph G-04.
 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 3. Workers' Compensation insurance as required by Section 3700 of the California Labor Code and Employer's Liability Insurance.
 4. Course of Construction insurance (if required) covering for "all risks" of loss.
- F-03 Minimum Limits of Insurance. Contractor shall maintain limits no less than:
1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.

3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.
4. Course of Construction: Completed value of the project.

F-04 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its agents, officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

F-05 Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Section 2782(b) of the Civil Code. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled or reduced by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Course of construction policies, if required, shall contain the following provisions:

1. The City shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the City.

F-06 Waiver of Subrogation. The workers' compensation policy is to be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses paid under the terms of the policy which arises from the work performed by the named insured for the City.

- F-07 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.
- F-08 Verification of Coverage. Contractor shall furnish the City with original certificates and amendatory **endorsements** affecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- F-09 Subcontractors. Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- F-10 Retention for Worker's Claims. If any injury occurs to any employee of the Contractor for which the employee, or his or her dependents in the event of his or her death, is entitled to compensation from the City under the provision of the "Worker's Compensation and Insurance Act", or for which compensation is claimed from the City, the City may retain out of the sums due the Contractor under this Contract an amount sufficient to cover such compensation, as fixed by such Act as amended.

SECTION G - RESPONSIBILITY AND RIGHTS OF CONTRACTOR

- G-01 Legal Address of Contractor. Both the address given in the proposal and the Contractor's office in the vicinity of the work are hereby designated as places to either of which drawings, samples, notices, letters of other articles or communications to the Contractor may be mailed or delivered. The mailing or delivery at either of these places shall be deemed sufficient notice thereof upon the Contractor. The address named in the proposal may be changed at any time by notice in writing from the Contractor to the City. Nothing herein contained shall be deemed to preclude or render inoperative the service of any drawing, sample, notice, letter or other article or communication to or upon the Contractor personally.
- G-02 Site Conditions. The Contractor shall satisfy itself as to the nature and location of the work, the general and local conditions, particularly those bearing upon transportation, disposal, handling and storage of material, availability of labor, water, electric power, roads and uncertainties of weather, or similar physical conditions at the site, the conformation and condition of the ground, the character, quality and quantity of surface and subsurface materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecution of the work and all other matters which can in any way affect the work or the cost thereof under this Contract. Any failure by the Contractor to acquaint itself with all the available information concerning these conditions will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work.

- G-03 Attention to Work. The Contractor shall give its personal attention to and shall supervise the work to the end that it shall be prosecuted faithfully, and when it is not personally present on the work, it shall at all reasonable times be represented by a competent superintendent or foreperson who shall receive and obey all instructions or orders given under the Contract, and who shall have full authority to execute the same and to supply materials, tools, and labor without delay, and who shall be the legal representative of the Contractor. The Contractor shall be liable for the faithful observance of any instructions delivered to it or to its authorized representative.
- G-04 Responsibility of Contractor. The Contractor shall do all of the work and furnish all labor, materials, tools and appliances, except as otherwise herein expressly stipulated, necessary or proper for performing and completing the work herein required in the manner and within the time herein specified. The mention of any specific duty or responsibility imposed upon the Contractor shall not be construed as a limitation or restriction of any general responsibility or duty imposed upon the Contractor by the Contract, said reference to any specific duty or responsibility being made herein merely for the purpose of explanation.

The right of general administration of the Contract by the City shall not make the Contractor an agent of the City and the liability of the Contractor for all damages to persons or to public or private property, arising from the Contractor's execution of the work, shall not be lessened because of such general administration.

Until the completion and final acceptance by the City of all of the work under and implied by this Contract, the work shall be under the Contractor's responsible care and charge. The Contractor shall rebuild, repair, restore, and make good all injuries, damages, re-erectments, and repairs, occasioned or rendered necessary by the work under this Contract or accidental causes of any nature, to all or any portions of the work, except as otherwise stipulated. The Contractor shall take all responsibility for the work, shall bear all losses resulting to it on account of the amount or character of the work to be done, or because the nature of the ground, in or on which the work is placed, is different from that assumed or expected.

The Contractor shall assume the defense of, and indemnify and save harmless the City, its Officers, City Engineer, and each and every employee and agent thereof from all suits, actions, damages, or claims of every name and description to which they may be subjected or put by reason of injury to persons or property in the execution of the work or resulting from negligence or carelessness on the part of the Contractor, its employees, or agents, in the delivery of materials and supplies, or by or on account of any act or omission of the Contractor, its employees or agents, including any failure to fulfill the terms of all laws and regulations which apply to the Contract. In no case shall the use of subcontractors in any way alter the position of the Contractor or its sureties with relation to its Contract with the City.

When a subcontractor is used, the responsibility for every portion of the work shall still remain with the Contractor.

- G-05 Protection of Persons and Property. The Contractor shall furnish such watchmen, guards, fences, railings, warning signs, walks, and lights as shall be necessary, and shall take all other necessary precautions to prevent damage or injury to persons or property.

All property line fences and other structures adjacent to or in the vicinity of the work shall be protected by the Contractor, and if they are injured or destroyed, they and any other property injured by the Contractor, its employees or agents, shall be restored to a condition as good as when he entered upon the work.

The Contractor shall be responsible for maintaining proper drainage and shall take all necessary precautions to prevent damage to persons or property if the natural drainage is interrupted because of its operations.

The Contractor shall examine all bridges, culverts and other structures on or near the work, over which it will move its materials and equipment and before using them, it shall properly strengthen such structures, where necessary. The Contractor will be held responsible for any and all injury or damage to such structures caused by reason of its operations.

- G-06 Protection of City Against Patent Claims. All fees, royalties, or claims for any patented invention, article, or method that may be used upon or in any manner connected with the work under this Contract shall be included in the price bid for the work, and the Contractor and its sureties shall indemnify and hold harmless the City together with all its officers, agents, servants, and employees, against any and all demands made for such fees or claims brought or made by the holder of any invention or patent, and before the final payment is made on account of the Contract, the Contractor shall, if requested by the Engineer, furnish acceptable proof of a proper release from all such fees or claims.

Should the Contractor, its agents, servants, or employees, or any of them, be enjoined from furnishing or using any invention, article, material, or appliance supplied or required to be supplied or used under this Contract, the Contractor shall promptly substitute other articles, materials or appliances in lieu thereof, of equal efficiency, quality, finish, suitability and market value, and satisfactory in all respects to the Engineer. Or in the event that the engineer elects, in lieu of such substitution, to have supplied, and to retain and use, any such invention, article, material or appliance as may be the Contract pay such royalties and secure such valid licenses as may be requisite and necessary for the City, its officers, agents, servants and employees, or any of them to use such invention, article, material or appliance without being disturbed or in any way interfered with by any proceeding in law or equity on account thereof. Should the Contractor neglect or refuse to make the substitution promptly, or to pay such royalties and secure such licenses as may be necessary, then in that event, the Engineer shall have the right to make such substitution, or the City may pay such royalties and secure such license, or recover the amount thereof from it and its sureties notwithstanding final payment under this Contract may have been made.

- G-07 Protection of Contractor's Work and Property. The Contractor shall protect its work, supplies, and materials from damage due to the nature of the work, the action of the elements, trespassers, or any cause whatsoever of the work. Neither the City nor any of

its officers, employees or agents assumes any responsibility for collecting indemnity from any person or persons causing damage to the work of the Contractor.

- G-08 Obstructions, Improvements and Utilities. Any obstructions along the line of work, such as mail or paper boxes, posts, fences, culverts, etc., which interfere with the Contractor's operation, shall be carefully removed and replaced by the contractor as soon as possible in a satisfactory condition. Lawn, hedges, shrubs, trees, etc., encountered in the line of work shall be carefully removed, kept moist and returned to their former location and kept moist until well established, unless the plans indicate such items to be removed.

Whenever trees or tree branches will interfere with the operation of equipment, such that severe damage to the trees or limbs might result, the Contractor will be required to employ other means of accomplishing the item of work involved, unless the plans state that the trees are to be removed or can be damaged or the Engineer's approval is obtained.

Any improvements along the line of work or in the area of work, such as driveways, streets, retaining walls, etc., shall be replaced, restored, and cleaned up by the Contractor.

The location of utilities such as gas mains and services, water mains and services, and underground telephone installations, are indicated on the plans in accordance with such information as may be available to the City. However, the exact positions of such facilities must be ascertained by the Contractor. Likewise, it shall be the duty of the Contractor to ascertain if additional facilities other than those shown on the plans may be in place. No compensation will be paid to the Contractor because utility services are other than shown on the plans or because facilities in addition to those shown on the plans may exist. The information concerning utilities as shown on the plans is offered for such use as the Contractor may wish to make of it, but the City does not guarantee its correctness or completeness.

- G-09 Protection of Buried Utilities. Unless otherwise indicated on the plans or specifications or unless otherwise cared for by the Owner thereof, all buried utilities and structures of any nature that may be affected by the work shall be maintained by the Contractor and shall not be disturbed or damaged by him during the progress of the work; provided that should the Contractor disturb, disconnect, or damage utility lines or structures, all expenses of whatever nature arising from such disturbance or the replacement or repair thereof shall be borne by the Contractor.

- G-10 Use of Explosives. When the use of explosives is necessary for the prosecution of the work, the Contractor shall use the utmost care not to endanger life or property.

All explosives shall be stored in accordance with the provisions of Division XI of the Health and Safety Code. Attention is called to any local ordinances involving the use or storage of explosives. The necessary permits shall be obtained from the Fire Protection Agency(s) having immediate jurisdiction.

Attention is called to the necessity of obtaining a permit from the Division of Fish and Game of the State of California, in advance of underwater use of explosives.

- G-11 Maintenance of Traffic. Throughout the performance of the work, or in connection with this Contract, the Contractor shall construct and adequately maintain suitable and safe crossings over the trenches and such detours as are necessary to care for public and private traffic. If required by the Engineer, the Contractor shall provide temporary pavement on trenches crossing heavily traveled roadways. Construction equipment shall interfere as little as possible with the free passage of traffic and the Contractor shall provide at its own expense the necessary signs, lights, runways, bridges, barricades, and watchmen necessary to safely direct public traffic past construction and equipment, or as directed by the Engineer. Convenient access to driveways, houses and buildings along the line of work shall be maintained and temporary approaches to crossings or intersecting highways, shall be provided and kept in good condition.

When any railroad, highway, private or public utility is crossed, all precautionary construction measures required by the Owner of the railroad, highway or utility shall be followed by the Contractor. The Contractor shall obtain and pay for all necessary permits, licenses, bonds, and fees required for the crossing and give all notices necessary and incident to the work.

- G-12 Regulations, Licenses and Permits. The Contractor shall secure and pay for all permits; give all notices; and comply with all laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified.

If the Contractor observes that the drawings and specifications are at variance therewith, it shall promptly notify the Engineer in writing, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. The Contractor shall acquire and possess such state, county and local licenses as are required by law, and shall furnish satisfactory proof to the Engineer that the licenses are in full effect for the life of the Contract.

- G-13 Road Signs. Before the Contractor removes any road sign which interferes with the work, it shall receive approval to do so from the Engineer.

- G-14 Sanitary Regulations. The operations of the Contractor shall be in full conformity with all the rules and regulations of Boards and Bodies having competent jurisdiction with respect to sanitation.

The necessary sanitary conveniences for the use of the workers on the project, properly obscured from the public observance, shall be constructed and maintained by the Contractor in such manner and at such points as shall be approved by the Engineer, and their use shall be strictly enforced. The collections in the same shall be removed when and where in the opinion of the Engineer it is advisable.

The Contractor shall obey and enforce such sanitary regulations and orders and shall take such precautions against contagious or infectious diseases as the Engineer may deem necessary. In case any contagious or infectious disease occurs among its

employees, the Contractor shall arrange for immediate removal of the patient from the work and for his or her isolation from all parties connected with the work.

The Contractor shall keep and maintain in good condition at some convenient point, all articles necessary for giving first aid to the injured.

- G-15 Construction Utilities. The Contractor shall be responsible for providing, for and in behalf of its work under this Contract, all necessary utilities, such as special connections to water supply, telephones, power lines, fences, roads, watchmen, suitable storage places, etc., at no expense to the City.
- G-16 Approval of Contractor's Plans. The approval, by the Engineer, of any drawing or any method of work proposed by the Contractor shall not release the Contractor of any of its responsibility for any errors therein and shall not be regarded as any assumption of risk 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 of any plan or method so approved. Such approval shall be considered to mean merely that the Engineer has no objection to the Contractor's using, upon its own full responsibility the plan or method proposed.
- G-17 Suggestions to Contractor. Any plan or method of work suggested by the Engineer to the Contractor, but not specified or required, if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor; and the Engineer and the City shall assume no responsibility therefor.
- G-18 Additional Engineering Costs Due to Contractor Error. Any additional engineering costs incurred by the Owner due to errors made by the Contractor shall be reimbursed to the Owner. Should the additional costs not be reimbursed to the Owner prior to final payment, the costs will be deducted from the final payment.
- G-19 Termination of Unsatisfactory Subcontracts. Should any subcontractor fail to perform in a satisfactory manner the work undertaken by it, such subcontract shall be terminated immediately by the Contractor upon notice from the Engineer.
- G-20 Preservation of Stakes and Marks. The Contractor shall carefully preserve bench marks, reference points, and stakes, and in case of destruction by reason of the Contractor's operations, it will be charged with the resulting expense of replacement and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.
- G-21 Assistance to Engineer. At the request of the Engineer, the Contractor shall provide workers from its force, and tools, stakes, and other materials to assist the Engineer temporarily in making measurements and surveys and in establishing temporary or permanent reference marks.
- G-22 Removal of Condemned Materials and Structures. The Contractor shall remove from the site of the work, without delay, all rejected and condemned materials or structures of any kind brought to or incorporated in the work, and upon its failure to do so, or to

make satisfactory progress in so doing within a reasonable time after the service of a written notice from the Engineer, the condemned materials or work may be removed by the City and the cost of such removal be taken out of the money that may be due or may become due the Contractor on account of or by virtue of this Contract. No such rejected or condemned material shall again be offered for use by the Contractor under the Contract.

- G-23 Proof of Compliance with Contract. In order that the Engineer may determine whether the Contractor has complied with the requirements of the Contract not readily enforceable through inspection and tests of the work and materials, the Contractor shall, at any time when requested, submit to the Engineer properly authenticated documents or other satisfactory proofs as to its compliance with such requirements.
- G-24 Errors and Omissions. If the Contractor, in course of the work, finds any errors or omissions in the drawings or in the layout as given by survey points and instructions, or if it finds any discrepancy between the drawings and the physical conditions of the locality, it shall immediately inform the Engineer in writing, and the Engineer shall promptly verify the same and issue instructions as to procedure. Any work done after such discovery, until authorized, will be done at the Contractor's risk.
- G-25 Cooperation. The Contractor shall cooperate with all other Contractors who may be performing work in behalf of the City and workers who may be employed by the City on any work in the vicinity of the work to be done under the Contract, allowing them full access to all work sites; and it shall so conduct its operations as to interfere to the least possible extent with the work of such Contractors or workmen. It shall promptly make good at its own expense, any injury or damage that may be sustained by other Contractors or employees of the City as a result of its actions.

Any difference or conflict which may arise between the Contractor and other Contractors, or between the Contractor and workers of the City in regards to their work, shall be adjusted and determined by the Engineer.

If the work of the Contractor is delayed because of any acts or omissions of any other Contractor or of the City, the Contractor shall on that account have no claim against the City other than for an extension of time.

- G-26 Hiring and Dismissal of Employees. The Contractor shall employ only such foreperson, mechanics, and laborers as are competent and skilled in their respective lines of work, and whenever the Engineer shall notify the Contractor that any worker on the work is, in his or her opinion, incompetent, unfaithful, intemperate, or disorderly or refuses to carry out the provisions of the Contract, appertaining to his or her work, or uses threatening or abusive language to any person on the work representing the City or is otherwise unsatisfactory, such person shall be discharged immediately from the work and shall not be re-employed upon it except with the consent of the Engineer.

The Contractor shall conduct the work in compliance with all existing state and national laws and county and municipal ordinances and regulations limiting or controlling the work in any manner. Particular attention is called to the following:

(1) Labor Discrimination. Attention is directed to Section 1735 of the Labor Code, of the State of California, which reads as follows: "No discrimination shall be made in the employment of persons upon public works because of the race, color or religion of such persons and every Contractor for public works violating this section is subject to all penalties imposed for violations of this chapter.

G-27 Wages of Employees. In accordance with Section 1775 of the California Labor Code, the Contractor shall as a penalty to the City, on whose behalf the Contract is made or awarded, forfeit not more than fifty dollars (\$50.00) for each calendar day or portion thereof, for each laborer, worker, or mechanic paid less than the stipulated prevailing rates for any public work done under the Contract by it or by any subcontractor under it.

In accordance with Section 1770 et seq. of the California Labor Code, the City has ascertained the general prevailing rates of wages applicable to the Project, a copy of which is on file in the City's office and available to any interested party on request. The wage rates shown are the minimum rates required to be paid during the life of the Contract. This is not a representation that labor can be obtained at these rates. It is the responsibility of bidders to inform themselves as to local labor conditions and prospective changes or adjustments of wage rates. No increase in the Contract price shall be authorized on account of the payment of wage rates in excess of those listed therein.

Certified payroll records shall be submitted to the City on a weekly basis.

G-28 Cleaning Up. The Contractor shall not allow the site of the work to become littered with trash and waste materials, but shall maintain the same in a neat and orderly condition throughout the construction period. The Engineer shall have the right to determine what is not waste material or rubbish and the place and manner of disposal. Where unreasonable amounts of dust would result from operations in the vicinity of residences, dust shall be controlled by sprinkling with water.

Before final acceptance of the work, the Contractor shall, with no extra charge therefor, carefully cleanup the work and premises, remove all temporary structures built by or for it, remove all surplus construction materials and rubbish of all kinds from the grounds which it has occupied and leave them in neat condition, acceptable to the Engineer.

Unless otherwise specified in the special provisions, the Contractor shall make its own arrangements for disposing of materials outside the right of way and it shall pay all costs involved therewith.

When any material, including excess or suitable excavated earth or other sewer materials are to be disposed of outside the right of way, the Contractor shall first obtain a written permit from the property owner on whose property the disposal is to be made.

Unless otherwise provided in the special provisions, full compensation for all costs involved in disposing of materials as above specified, shall be considered as included in

the prices paid for the various contract items of work and no additional allowance will be made therefor.

- G-29 Guaranty. All work shall be guaranteed for a period of one (1) year from the date of acceptance by the City. The Contractor shall promptly make all needed repairs arising out of defective materials, workmanship, and equipment, without compensation. In addition, the Contractor shall furnish a defective material and workmanship bond in an amount equal to 20% of the final contract price, pursuant to Section E-03.

The City is hereby authorized to make such repairs, if within fifteen (15) days after the mailing of a notice in writing to the Contractor, or its agent, the Contractor shall neglect to make or undertake with due diligence, the aforesaid repairs; provided, however, that in case of emergency, where, in the opinion of the City, delay would cause serious loss or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the costs thereof.

- G-30 Trenching Requirements. Pursuant to the provisions of California Labor Code Section 6705, where the Contract involves an estimated expenditure greater than \$25,000, excavation for any trench five (5) feet or more in depth shall not begin until the Contractor has received approval from the Engineer of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Such plan shall be submitted at least five (5) days before the Contractor intends to begin excavation for the trench and shall show the details of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. The plan shall not use shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety and if such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California.

In addition, the Contractor shall obtain, pay for, and comply with all provisions of the permit required by Section 6500 of the California Occupational Safety and Health Act of 1973.

In accordance with the provisions of California Labor Code Section 6707, when applicable each Bidder shall list, in the Bid Item indicated, the amount contained in its proposal for adequate trench and excavation sheeting, shoring, and bracing or equivalent method for the protection of life and limb which shall conform to applicable Safety Orders.

- G-31 Apprentices. Attention is directed to the provisions in Section 1777.5 and 1777.6 of the Labor Code, as amended from time to time, concerning the employment of apprentices by the Contractor or any subcontractor under it.

Section 1777.5 as amended requires the Contractor or subcontractor employing workers in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate will also fix the ratio of

apprentices to journeymen that will be used in the performance of the Contract. The ratio of apprentices to journeymen in such cases shall not be less than one to five except:

- A. When unemployment in the area of coverage by the joint apprenticeship committee has exceeded an average 15 percent in the 90 days prior to the request for certificate; or,
- B. When the number of apprentices in training in the area exceeds a ratio of one to five; or,
- C. When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis statewide or locally; or,
- D. When the Contractor provides evidence that it employs registered apprentices on all of its contracts on an annual average of not less than one apprentice to eight journeymen.

The Contractor is required to make contributions to funds established for the administration of apprenticeship programs if it employs registered apprentices or journeymen in any apprenticable trade on such contracts and if other contractors on the public works site are making such contributions.

The Contractor and any subcontractor under it shall comply with the requirements of Section 1777.5 and 1777.6, as amended from time to time, in the employment of apprentices.

Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its Branch Offices.

G-32 Discovery of Hazardous Waste or Unusual Conditions. Pursuant to the provisions of California Public Contract Code Section 7104, where the Contract involves digging trenches or other excavations that extend deeper than four feet below the surface, the following shall apply:

- A. The Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:
 - 1. Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - 2. Subsurface or latent physical conditions at the site differing from those indicated.
 - 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

- B. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described herein.
- C. In the event that a dispute arises between the City and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the parties.

SECTION H - RESPONSIBILITY AND RIGHTS OF THE CITY OF ST. HELENA

H-01 Authority of Engineer. All work done under the Contract shall be done in a workmanlike manner and shall be performed to the satisfaction of the Engineer, who shall provide general administration of the Contract. To prevent disputes and litigation, the Engineer shall in all cases determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this Contract; shall decide all questions relative to the true construction, meaning, and intent of the specifications and drawings; shall decide all questions which may rise relative to the classifications and measurements of quantities and materials and the fulfillment of the Contract; and shall have the power to reject or condemn all work or materials which do not conform to the terms of the Contract. The Engineer's estimate and decision in all matters shall be a condition precedent to the right of the Contractor to receive, demand or claim any money or other compensation under this Agreement and a condition precedent to any liability on the part of the City to the Contractor on account of the Contract.

Whenever the Engineer shall be unable to act, in consequence of absence or other cause, then such engineers, as he or she shall designate, shall perform any and all of the duties as be vested with any or all of the powers herein given to the Engineer.

H-02 Inspection. The City will provide sufficient competent engineering personnel for the inspection of the work. All inspection requested outside of the normal City working hours or days shall be reimbursed to the City by the Contractor at the rates in effect at that time.

Projects financed in whole or in part with Federal funds shall be subject to inspection at all times by the Federal agency involved.

The Engineer and his or her representatives shall at all times have access to the work whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for inspection. The inspection of the work shall not relieve the Contractor of any of its obligations to fulfill its Contract as prescribed, and defective work shall be made good, and unsuitable materials may be rejected notwithstanding that

such defective work and materials have been previously overlooked by the Engineer and accepted or estimated for payment.

If the specifications, the Engineer's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection, and if the inspection is by another authority other than the Engineer, of the date fixed for such inspection. Inspections by the Engineer shall be promptly made and where practicable at the source of supply. If any work should be covered without approval or consent of the Engineer, it must, if required by the Engineer, be uncovered for examination and properly restored at the Contractor's expense.

Re-examination of any work may be ordered by the Engineer, and, if so ordered, the work must be uncovered by the Contractor. If such work is found to be in accordance with the Contract documents, the City shall pay the cost of re-examination and replacement. If such work is not in accordance with the Contract documents, the Contractor shall pay such cost.

Properly authorized and accredited inspectors shall be the representatives of the City limited to the duties and power entrusted to them. It will be their duty to inspect materials and workmanship of those portions of the work to which they are assigned, whether individually or collectively, under instructions of the Engineer and to report any and all deviations from the drawings, specifications, and other Contract provisions which may come to their notice. Any Inspector may be considered to have the right to order the work entrusted to his or her inspection stopped, if in his or her opinion, such action becomes necessary, until the Engineer is notified and has determined and ordered that the work may proceed in due fulfillment of all Contract requirements.

- H-03 Surveys. From such information as indicated on the drawings, the Contractor shall develop and make all detailed surveys needed for construction such as slope stakes, batter boards, and other working points, lines and elevations. Stakes and marks set shall be carefully preserved by the Contractor, for the duration of the construction of the project. Contractor shall set stakes that can be checked prior to commencement of work.

Any work done without base control lines, levels, or grades as indicated on the drawings, may be ordered removed and replaced at the Contractor's sole cost and expense, except when such work is authorized by the Engineer in writing.

- H-04 Lands and Rights-of-Way. The City shall provide as indicated on the drawings and not later than the date when needed by the Contractor, the lands upon which the work under this Contract is to be done, rights-of-way for access to same, and such other lands as may be designated on the drawings for the use of the Contractor. In the event of delay on the part of the City, its officers, agents or employees, in obtaining such right-of-way or easements for the work to be constructed, then the Contractor shall have time for the completion of its Contract for the period or periods caused by such delay or delays but shall have no damages against the City, its officers, agents or employees.

The Contractor shall provide at its own expense and without liability to the City, any additional land and access thereto that may be required for temporary construction facilities.

H-05 Retention of Imperfect Work. If any portion of the work done or material furnished under the Contract shall prove defective and not in accordance with the specifications and drawings, and if the imperfection in the same shall not be of sufficient magnitude or importance to make the work dangerous or undesirable, or if the removal of such work is impracticable or will create conditions which are dangerous or undesirable, the Engineer shall have the right and authority to retain such work instead of requiring the imperfect work to be removed and reconstructed, but he or she shall make such deductions therefor in the payment for or to become due the Contractor as may be just and reasonable.

H-06 Changes in the Work. The Engineer shall have the right to order additions to, omission from, or corrections, alterations, and modifications in the line, grade, form, dimensions, plan or kind or amount of work or materials herein contemplated, or any part thereof, either before or after the beginning of construction where such changes are necessary to carry out the intent and purpose of the project as set forth in the plan.

The order for such additions, omissions, corrections, alterations, and modifications shall be in writing and signed by the Engineer, and such order shall then be binding upon the Contractor. The Contractor shall proceed with the work as changed and the value of such change shall be determined as provided for in Paragraph K-02. Work called for by a change order shall be performed fully and completely and in accordance with the original Contract plans and specifications except for the specific change mentioned in the written change order. Drawings accompanying change orders shall be deemed a part of the change order. The adjustment in Contract price, if any, shall be set forth in the change order.

Such alterations shall in no way effect, vitiate or make void this Contract or any part thereof, except that which is necessarily affected by such alterations and is clearly the evident intention of the parties to the Contract.

In case of neglect or refusal by the Contractor to perform any extra work which may be authorized by the Engineer or to make satisfactory progress in the execution of the same, the City may employ any person or persons to perform such work and the Contractor shall not in any way interfere with or molest the person or persons so employed.

H-07 Additional Drawings by City. The drawings made a part of this Contract at the time of its execution are intended to be comprehensive and to indicate in detail the scope of the work. In addition to these drawings, however, the Engineer may furnish such additional drawings from time-to-time during the progress of the work as are necessary to make clear or to define in greater detail the intent of the specifications and Contract drawings, and the Contractor shall make its work conform to all such drawings.

H-08 Suspension of Work. The City may at any time suspend the work, or any part thereof by giving five (5) days notice to the Contractor in writing. The work shall be resumed by

the Contractor within ten (10) days after the date fixed in the written notice from the City to the Contractor to do so. The City shall reimburse the Contractor for expense incurred by the Contractor in connection with the work under this Contract as a result of such suspension.

If the work, or any part thereof, shall be stopped by the notice in writing aforesaid, and if the City does not give notice in writing to the Contractor to resume work at a date within twenty (20) days of the date fixed in the written notice to suspend or the period required to process legal proceedings, then the Contractor may abandon that portion of the work so suspended and he will be entitled to the estimates and payments for all work done on the portions so abandoned, if any, to compensate for loss of overhead, plant expense, and anticipated profit.

- H-09 Right of City to Terminate Contract. If the Contractor should be adjudged a bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if it should fail to make prompt payments to subcontractors for material or labor, or persistently disregard laws, ordinances or the instructions of the Engineer, or otherwise be guilty of a substantial violation of any provision of the Contract, then the City, upon the certificate of the Engineer that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy, and after giving the Contractor seven (7) days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method the City may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of finishing the work, including compensation for additional managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the City.
- H-10 Use of Completed Portions. The City shall have the right to take possession and use completed or partially completed portions of the work, notwithstanding the time for completing the entire work or such portions which may not have expired; but such taking possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract documents. If such prior use increases the cost of or delays the work, the Contractor shall be entitled to such extra compensation, or extension of time or both, as the Engineer may determine.
- H-11 Nature of Estimated Quantities. The amount of work to be done and material to be furnished under this Contract, under each of the items described in detail in the specifications, has been estimated as set forth in these specifications, and this estimate will be used as a basis for comparing bids. The City does not expressly or by implication agree that the actual amount of work or material of any class will correspond to this estimate, but reserves the right to increase or decrease the amount of any class or portion of the work as in its opinion may be to the interest of the City.

The Contractor shall make no claims for anticipated profits, for loss of profit, for damages, or for any extra payment whatever (except as provided for in the specifications under the heading of "Changes in the Work"), because of any difference between the amount of work actually done or materials actually furnished, and the estimated amount as herein set forth.

- H-12 Removal of Equipment. In the case of termination of this Contract before completion for any cause whatever, the Contractor, if notified to do so by the City, shall promptly remove any part or all of its equipment or supplies from the property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of the contractor.

SECTION I - WORKMANSHIP, MATERIALS AND EQUIPMENT

- I-01 General Quality. Materials and equipment shall be new and of quality equal to that specified or approved. Work shall be done and completed in a thorough and workmanlike manner.
- I-02 Quality in Absence of Detailed Specifications. Whenever under this Contract it is provided that the Contractor shall furnish materials or manufactured articles or shall do work for which no detailed specifications are set forth, the materials or manufactured articles shall be of the best grade in quality and workmanship obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first-class materials or articles of the kind required, with due consideration of the use to which they are to be put. In general, the work performed shall be in full conformity and harmony with the intent to secure the best standard of construction and equipment of the work as a whole or in part.
- I-03 Materials and Equipment Specified by Name. Whenever any material or equipment is indicated or specified by patent or proprietary name or by the name of the manufacturer, such specifications shall be considered as used for the purpose of describing the material or equipment desired and shall be considered as followed by the words, "or approved equal." The Contractor may offer any material or equipment which shall be equal in every respect to that specified, provided however, that written approval first is obtained from the engineer.
- I-04 Source of Materials. The Contractor shall furnish the Engineer a list of its sources of materials.
- I-05 Storage of Materials. Materials shall be stored as to ensure the preservation of their quality and fitness for the work. They shall be so located and disposed that prompt and proper inspection thereof may be made. Storage of materials in the street right-of-way shall require the approval of the City.
- I-06 Samples and Tests. When requested by the Engineer, samples of test specimens of the materials to be used or offered for use in connection with the work shall be prepared at the expense of the Contractor and furnished by it in such quantities and sizes as may be

required for proper examinations and tests, with all freight charges prepaid and with information as to their sources.

All samples shall be submitted before shipment and in ample time to permit the making of proper tests, analyses, or examination before the time at which it is desired to incorporate the material into the work. All tests of materials furnished by the Contractor shall be made by the Contractor in accordance with recognized standard practice. No material shall be used in work unless or until it has been approved by the Engineer. Samples will be accrued and tested whenever necessary to determine the quality of the materials. All tests required will be made at the Contractor's expense.

The City shall be responsible for providing the necessary initial compaction tests.

- I-07 Additional Soils Tests. Additional soils tests that are required due to the initial soils test failure to pass shall be the Contractor's responsibility. Any outstanding costs not paid prior to completion of the project will be deducted from the final payment.

SECTION J - PROSECUTION OF WORK

- J-01 Equipment and Methods. The work under the Contract shall be prosecuted with all materials, tools, machinery, apparatus, and labor, and by such methods as are necessary to the complete execution of everything described, shown or reasonably implied. The Contractor alone shall be responsible for the safety, adequacy, and efficiency of its plant, equipment and methods.
- J-02 Programming of the Work. The Contractor shall promptly begin the work required under this Contract within ten (10) days after return of the Contract to the Contractor, executed by the City or at some other time as might be stipulated by the parties at the time of execution of the Contract, and shall prosecute it diligently from day-to-day thereafter at such a rate that all work shall be completed within the time allowed under the Contract, as stipulated in the Special Conditions. Said allowed time may be extended as a result of unavoidable delays, or for other reasons as set forth elsewhere in these specifications.

Within one (1) week after the Contractor has begun work, it shall submit to the Engineer a schedule of operations giving the estimated times that each part or class of work will be started and completed.

- J-03 Avoidable Delays. Avoidable delays in the prosecution or completion of the work shall include all delays which might have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor. Delays due to adverse weather conditions shall be regarded as avoidable delays except as they occur as a result of unduly or unseasonably high ground water or flood condition.

Delays in the prosecution of parts of the work, which may in themselves be avoidable but do not necessarily prevent or delay the prosecution of other parts of the work nor the completion of the whole work within the time herein specified, reasonable loss of time resulting from the necessity of submitting plans to the Engineer for approval and from

the making of surveys, measurements, and inspections, and such interruptions as may occur in the prosecution of the work on account of a reasonable interference of other Contractor's employed by the City, which do not necessarily prevent the completion of the whole work within the time herein specified, will be considered by the City as avoidable delays within the meaning of the Contract.

J-04 Unavoidable Delays. Unavoidable delays in the prosecution of completion of the work under the Contract shall include all delays which may result through causes beyond the control of the Contractor and which it could not have provided against by the exercise of care, prudence, foresight, and diligence. Orders issued by the City, changing the amount of work to be done, the quantity of material to be furnished or the manner in which the work is to be prosecuted, and the unforeseen delays in the completion of the work of other Contractors under Contract with the City will be considered unavoidable delays, so far as they necessarily interfere with the Contractor's completion of the whole of the work.

J-05 Notice of Delays. The Contractor shall promptly notify the City whenever it foresees any delay in the prosecution of the work, and in any event immediately upon the occurrence of any delay which the Contractor regards as the probability of the occurrence of such delay and its cause, in order that the City may take immediate steps to prevent, if possible, the occurrence or continuance of the delay, or if this cannot be done, may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the work are to be delayed thereby.

After the completion of any part or the whole of the work, the Engineer, in estimating the amount due the Contractor, will assume that any and all delays which have occurred in its prosecution and completion have been avoidable delays, except such delays as shall have been called to the attention of the Engineer at the time of their occurrence and found by the City to have been unavoidable. The Contractor will make no claims that any delay not called to the attention of the Engineer at the time of its occurrence has been an unavoidable delay.

The Contractor expressly waives any allowance by way of damages for any delays as to which the City shall determine extra compensation is not due and the extension of time granted, if any, shall be the Contractor's sole remedy.

J-06 Extension of Time.

(1) Avoidable Delays. In case the work called for under this Contract is not finished and completed in all parts and requirements within the time specified, including such extra time as may have been allowed for unavoidable delays, the City shall have the right to grant a further extension of time to the Contractor, as may seem best to serve the interests of the City, in which to complete the Contract. During such extension of time, the Contractor shall be charged for engineering and inspection services as provided in Paragraph K-03, but shall not be charged liquidated damages as provided in Paragraph K-04.

- (2) Unavoidable Delays. For delays which the City considers to be unavoidable, the Contractor shall, pursuant to its application, be allowed an extension of time beyond the time herein set forth, proportional to such delay or delays, in which to complete the contract. During such extension of time, neither extra compensation for engineering and inspection as provided in Paragraph K-03, nor liquidated damages as provided in Paragraph K-04, shall be charged to the Contractor.

The Contractor expressly waives any allowances by way of damages for any delay as to which the City shall determine extra compensation is not due and the extension of time granted, if any, shall be the Contractor's sole remedy.

- J-07 Unfavorable Weather and Other Conditions. During unfavorable weather and other conditions, the Contractor shall pursue only such portions of the work as shall not be damaged thereby. No portions of the work whose satisfactory quality of efficiency will be affected by any unfavorable conditions shall be constructed while these conditions remain, unless by special means or precautions approved by the Engineer, the Contractor shall be able to overcome them.
- J-08 Sunday, Holiday and Night Work. No work shall be done between the hours of 5:00 p.m. and 8:00 a.m., nor on Sundays or legal holidays except such work as is necessary for the proper care and protection of work already performed, or except in case of an emergency, and in any case only with the permission of the Engineer.

It is understood, however, that night work may be established as a regular procedure by the Contractor if it first obtains the written permission of the Engineer, and that such permission may be revoked at any time by the Engineer if the Contractor fails to maintain at night, adequate force and equipment for reasonable prosecution and to justify inspection of the work.

- J-09 Hours of Labor. Eight (8) hours of labor shall constitute a legal day's work, and the Contractor or any subcontractor shall not require or permit more than eight (8) hours of labor in a day from any person employed by it in the performance of the work under the contract. The Contractor shall forfeit to the City, as a penalty, the sum of twenty-five dollars (\$25.00) for each worker employed in the execution of the Contract by it or by any subcontractor, for each calendar day during which such laborer, worker, or mechanic is required or permitted to labor more than eight (8) hours in violation of the provisions of Section 1810 to 1816, inclusive, (Article 3, Chapter 1, Part 7, Division 2) of the Labor Code of the State of California; provided however and pursuant to Section 1815 of the Labor Code, work performed by employees of the Contractor in excess of eight (8) hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

SECTION K – PAYMENT

- K-01 Progress Payments. The City shall, once in each month, cause an estimate in writing to be made by the Engineer of the total amount of work done, and the acceptable materials furnished and delivered by the Contractor on the ground and not used, to the time of

such estimate, and the value thereof. The City shall retain ten percent (10%) of such estimated value of the work done and ten percent (10%) of the value of the materials so estimated to have been furnished and delivered and unused as aforesaid as part security for the fulfillment of the Contract by the Contractor; and shall monthly pay to the Contractor, while carrying on the work, the balance not retained as aforesaid, after deducting therefrom all previous payments and all sums to be kept or retained under the provisions of the Contract.

No such estimate or payment shall be required to be made, when, in the judgment of the Engineer, the work is not proceeding in accordance with the provisions of the Contract, or when in his or her judgment, the total value of the work done since the last estimate amounts to less than One Thousand Dollars (\$1,000.00).

K-02 Change Orders. Whenever corrections, alterations, or modifications of the work under this Contract are ordered by the Engineer and increase the amount of the work to be done, such work shall be known as extra work and when such corrections, alterations, or modifications decrease the amount of work to be done, such subcontracted work shall be known as work omitted.

For changes in work for which no unit process have been stated in the Proposal, adjustment, if any, in the amounts to be paid to the Contractor by reason of any change, addition, or deduction shall be determined by unit prices or lump sum amounts fixed by agreement between the City and the Contractor, or failing such an agreement in price, an amount equal to the sum of Items 1 through 5 below shall be used as the full and proper compensation therefor and such amount shall be added to or subtracted from, as the case may be, the price fixed by the terms of this Contract for the part of the work affected.

- (1) The necessary reasonable cost to the Contractor of the material required for the work as furnished by the Contractor and delivered by it at the site of the work.
- (2) The necessary reasonable cost to the Contractor of the labor (including foreperson devoting their exclusive attention to the work in question), required to incorporate all of said material into the work and to finish the work in accordance with directions.
- (3) The necessary reasonable cost to the Contractor of equipment used for the work. In any case, equipment rental rates shall not exceed current local rates as promulgated by the California Division of Highways.
- (4) The cost of worker's compensation insurance premiums, State unemployment and Federal Social Security payments on the labor included in Item 2.
- (5) Fifteen percent (15%) of Items 1, 2, 3, and 4, which shall be considered as covering all other expenses and profit.

It is understood that labor, materials, and equipment may be furnished by the Contractor, or by the subcontractor, or by others on behalf of the Contractor. When the work is performed by other than the Contractor's organization, the Contractor shall

reach an agreement with such other forces as to the distribution of payments made for such and no additional payment therefor will be made by the City.

In order that a proper estimate may be made by the Engineer of the net cost of labor and materials entering into extra work, in accordance with the procedure heretofore stated, the Contractor shall furnish weekly an itemized statement of material and labor supplied together with the cost of such material and the wages paid, and shall furnish vouchers for quantities and prices of such labor, material or work. In case the Contractor fails to comply with the above provisions, it shall have no claim for compensation against the City.

- K-03 Compensation to the City for Extension of Time. In case the work called for under the Contract is not completed within the time limit stipulated herein, the City shall have the right as provided in Paragraph J-06 (1), to extend the time of completion thereof. If the time limit be so extended, the City shall have the right to charge to the Contractor and to deduct from the final payment for the work the actual cost to the City of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract and which accrue during the period of such extension, except that the cost of final surveys and preparation of final estimate shall not be included in such charges. In such event, liquidated damages as provided for in Paragraph K-04 shall not be charged.
- K-04 Liquidated Damages for Delay. It is agreed by the parties to the Contract that time is of the essence and that in case all the work is not completed before or upon the expiration of the time limit as set forth therein, including such extra time as allowed for unavoidable delays and for extensions as set forth in Paragraph J-06 (1), damage will be sustained by the City, and that liquidated damages are to be due from the Contractor whenever actual damages cannot be calculated; and it is therefore agreed that the Contractor will pay to the City the sum of Three Hundred dollars (\$300.00) per day liquidated damages for each and every calendar day's delay beyond the time prescribed. However, where actual damages can be calculated, the actual damages are to be paid even though they exceed the amount of liquidated damage.
- K-05 Final Acceptance of Work. The Contractor shall notify the Engineer in writing of the completion of the work, and the Engineer shall promptly satisfy himself or herself as to the actual completion of the work and shall then advise the City Council the work is completed and ready for acceptance.
- K-06 Final Estimate and Payment. As soon as possible after the completion of the work and notification by the Engineer that the work is ready for acceptance, the City Council will accept the work and within ten (10) days after acceptance, shall cause a Notice of Completion to be filed. Within thirty-five (35) days after such filing, final payment shall be made provided that:
- (1) All claims against the City arising out of the performance of the Contract by the Contractor have been released.

(A) The parties further agree that such claims may include claims that the Contractor has failed to make fringe benefit payments owed to a union trust fund pursuant to a collective bargaining agreement. In such cases, the City may withhold from final payment an amount sufficient to satisfy any such claims presented to the City by a representative of the union trust fund. If a representative of the union trust fund fails to file a legal action to enforce any rights under a collective bargaining agreement within thirty (30) days after the recording of a Notice of Completion, the City will release the monies withheld for such claims. If a legal action is timely commenced, the City may continue to withhold the claimed amounts pending resolution of any such proceeding.

(2) No defective work remains uncorrected.

(3) A Defective Material and Workmanship Bond is furnished as required in Paragraph E-03.

The Engineer shall make up the final estimate of the amount of work done and the value of such work and this amount, after deducting all previous payments and all amounts to be permanently retained under the provisions of this Contract shall constitute the final payment. No payment made under this Contract shall be construed to be an acceptance of any defective work or improper materials.

K-07 Security for Retention. In accordance with Government Code Section 22300, Contractor shall be allowed to substitute securities for any monies withheld by the City to ensure performance under this Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, who shall then pay such monies to Contractor. Upon satisfactory completion of this Contract, securities shall be returned to Contractor.

Alternatively, Contractor may request and the City shall make payment of retention earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of payments into securities, and Contractor shall receive the interest earned on the investments upon the same terms provided for in the preceding paragraph. Upon satisfactory completion of the Contract, Contractor shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the City, pursuant to the terms provided by Labor Code Section 22300(b). Contractor shall pay to each subcontractor, not later than twenty (20) days from the receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each subcontractor, on the amount of retention withheld to ensure the performance of Contractor.

Securities eligible for investment under the preceding paragraph shall include those listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and the City.

Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

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