

## PART II – GENERAL CONDITIONS

(Blue Pages)

SECTION 00700 – GENERAL CONDITIONS

1.	Contract and Contract Documents.....	1
2.	Definitions.....	1
3.	Conflicting Conditions.....	4
4.	Pre-construction Conference.....	4
5.	Plans and Specifications.....	4
6.	Submittal Schedule.....	4
7.	Additional Instructions and Detail Drawings.....	4
8.	Record Drawings (“As-Built”) and Preconstruction Video.....	5
9.	Grade Certificates.....	5
10.	Shop or Setting Drawings.....	6
11.	Compliance With Laws and Regulations.....	6
12.	Employment Of Illegal Aliens.....	6
13.	Contractor's Obligations – Cooperation with Others.....	7
14.	Employees Of Contractors.....	7
15.	Apprentices and Trainees.....	7
16.	Superintendence By Contractor.....	8
17.	Subcontracting.....	8
18.	Subcontract Documents.....	9
19.	Separate Contracts.....	9
20.	Assignments.....	9
21.	Notice and Service Thereof.....	9
22.	Surveys.....	9
23.	Permits, Licenses and Regulations.....	10
24.	Reports, Records and Data.....	10
25.	Payrolls and Basic Records.....	10
26.	Underground Service Alert (USA) Markings.....	10
27.	Errors and Discrepancies Noted by Contractor.....	10
28.	Construction Project Signs.....	11
29.	Potholing Existing Utilities/High Risk Facilities – Differing Site Conditions.....	11
30.	Removal/Relocation of Public Service or Other Equipment or Structures.....	14
31.	Shutdown/Tie-Ins of Existing Utilities.....	14
32.	Construction Schedule, Progress Meetings, Commencement of Work, and Periodic Estimates.....	14
33.	Time for Completions and Liquidated Damages.....	15
34.	Contractor Storage Area.....	16
35.	Contractor's Parking.....	17
36.	Construction Work Hours Regulations.....	17
37.	Contractor Use of Premises.....	17
38.	Overtime Requirements.....	17
39.	Safety and Health Regulations for Construction.....	18
40.	Hazardous Materials and Worker Safety.....	18
41.	Materials, Services and Facilities.....	19
42.	Contractor's Title to Material.....	19
43.	Inspection and Testing of Materials.....	19
44.	"Or Equal" Clause.....	19
45.	Patents, Licenses and Royalty Fees.....	20
46.	Weather Conditions.....	20

47.	Protection of Work and Property - Emergency .....	21
48.	Use of Premises, Preservation of Property and Damages .....	22
49.	Continuous Use of Existing Building .....	23
50.	Maintaining Public and Traffic Safety .....	23
51.	Hauling .....	23
52.	Maintaining Access .....	23
53.	"No Parking" in Construction Zones .....	24
54.	Cleanup and Removal of Debris .....	24
55.	Hold Harmless .....	25
56.	Contractor's and Subcontractor's Insurance .....	25
57.	Faithful Performance and Payment (Labor and Material) Bonds .....	30
58.	Consent of Sureties .....	30
59.	Engineer Authority .....	30
60.	Prohibited Interests .....	31
61.	Inspection .....	31
62.	Land and Rights-of-Way .....	32
63.	Temporary Work Easements .....	32
64.	Work Done By Others .....	32
65.	Beneficial Use .....	33
66.	Payment to Contractor .....	33
67.	Payment for Mobilization .....	35
68.	Withholding Payments .....	35
69.	Final Payment – Effect Thereof .....	36
70.	Satisfaction of Liens .....	36
71.	Payments By Contractor .....	37
72.	Retention of Legal Rights .....	37
73.	Quantities of Estimate .....	37
74.	Changes In Work .....	37
75.	Correction of Work .....	38
76.	Claims for Extra Costs .....	39
77.	Claims and Protests .....	40
78.	Suspension of Work .....	40
79.	Unanticipated Concealed Conditions .....	40
80.	Final Review/Acceptance of Project Work .....	41
81.	Mutual Responsibility of Contractors .....	41
82.	Guaranty .....	42
83.	Equal Employment Opportunity .....	42
84.	Area Affirmative Action Plan .....	43
85.	Prevailing Wage .....	44
86.	Clean Air Act and Federal Water Pollution Control Act .....	44
87.	Stormwater Pollution Prevention Requirements .....	45
88.	Sound Control Requirements .....	46
89.	Dust Alleviation and Control .....	46
90.	National Historic Preservation Act of 1966 .....	46
91.	Required Provisions Deemed Inserted .....	46
92.	Right of the City to Terminate Contract .....	46
93.	Failure to Complete Work .....	47
94.	Ownership of Work Product .....	47
95.	Noncollusion Affidavit to be Executed by Bidder and Submitted With Bid .....	47

96.	Certification for Contracts, Grants, Loans, and Cooperative Agreements .....	48
97.	Five Year Moratorium On New Asphalt Pavements .....	48

## SECTION 00700 - GENERAL CONDITIONS

### 1. CONTRACT AND CONTRACT DOCUMENTS

The Contract documents shall form part of the contract, and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the contract documents and in no way affect, limit or cast light on the interpretation of the provisions to which they refer.

Prior to submitting the Bid Proposal, it shall be the Contractor's responsibility to obtain all reference material required for the successful performance of the contract, including, but not limited to, the latest edition of the "*City of Daly City General Conditions, Standard Specifications and Drawings.*"

Except as otherwise specified herein or in the Special Provisions, no separate payment will be made for Contractor's conformance with applicable provisions of Section 00700. All costs for such conformance shall be included in bid prices, or otherwise borne by the contractor.

### 2. DEFINITIONS

- (a) *Acceptance by City:* Action by the City Council, usually in the form of a resolution, stating that the City Council accepts the contractor's work based on the Engineer's certification that all provisions of the contract have been fully complied with and to the satisfaction of the Engineer; or in the case of certain improvements, action to accept the Contractor's work by the Board of Directors of the North San Mateo County Sanitation District, a subsidiary agency of the City of Daly City.
- (b) *Agency:* See *Daly City Redevelopment Agency*.
- (c) *Apprentice:* (1) A person employed and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau; or (2) a person in the first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Council (where appropriate) to be eligible for probationary employment as an apprentice.
- (d) *Bidder:* Any individual, partnership, firm, or corporation acting directly or through a duly authorized representative, submitting a proposal to perform the work on the project.
- (e) *Calendar Days:* See Item (p) - "*Days*"
- (f) *City:* The City of Daly City, California and/or its subsidiary agencies, i.e. North San Mateo County Sanitation District, Daly City Redevelopment Agency, etc., acting through the City Council, the District or other duly authorized authority.
- (g) *City Engineer or Engineer:* The duly appointed City Engineer of Daly City, acting directly or through authorized agents.
- (h) *City Standards:* See *Standard Specifications*.
- (i) *Contract:* The contract documents executed by the City and the Contractor.

- (j) *Contract Documents:* The Notice Inviting Bids, the accepted bid, the Non-Collusion Affidavit, the Agreement, the Faithful Performance Bond, the Labor and Materials Bond, insurance coverage (including but not limited to the insurance policy, any endorsements thereto, and certificates of insurance), the Plans, the Special Provisions, the *City of Daly City General Conditions, Standard Specifications and Drawings*, referenced Specifications, Change Orders, and all addenda setting forth any modifications or interpretations of any of the said documents. Unless otherwise specified, all referenced specifications or standards shall be the current edition.
- (k) *Contract Plans and Specifications:* The directions, provisions, and requirements contained in the contract documents pertaining to the method and manner of performing the work on the project, or to the quantities, and the qualities of the materials to be furnished under the contract.
- (l) *Contractor:* The individual, partnership, firm, or corporation executing the contract, acting directly or through lawful agents or employees, who is primarily liable for the acceptable performance of the work for which he has contracted, and also the payment of all legal debts pertaining to the work.
- (m) *Council:* The duly elected City Council of the City of Daly City.
- (n) *County:* The County of San Mateo.
- (o) *Daly City Redevelopment Agency:* The Agency. A political subdivision of the State of California, whose Board of Directors are the City Council of Daly City, and whose purpose is the redevelopment of certain portions of the City's older business areas.
- (p) *Days:* The word "days" shall mean calendar days unless specifically noted otherwise.
- (q) *District:* See *North San Mateo County Sanitation District*.
- (r) *Engineer:* See *City Engineer*.
- (s) *Faithful Performance Bond:* The approved form of security furnished by the Contractor and Contractor's surety as a guarantee that the Contractor will be responsible for the entire and satisfactory fulfillment of the contract.
- (t) *Inspector:* An authorized representative of the Engineer assigned to make all necessary inspection of the work performed, or being performed, or of the materials furnished or being furnished by the Contractor.
- (u) *Payment (Labor and Material) Bonds:* The approved form of security furnished by the Contractor and Contractor's surety as a guarantee that all bills and accounts for materials and labor used in the construction of the work on the project will be paid in full, as provided by law.
- (v) *North San Mateo County Sanitation District:* The District. A subsidiary agency of the City of Daly City for the purpose of providing sewer collection and treatment services and maintenance of the facilities required therefor.
- (w) *Ordinance:* The General Ordinances of the City, published by order of the City Council, as embodied in the Code of the City of Daly City.
- (x) *Plans:* The official plans, working drawings or supplemental drawings or exact reproductions thereof, approved by the Council or Engineer, which show the locations, character, dimensions and details of the work on the project and the work to be done. The plans are to be considered as a part of the contract documents, complementary to the specifications.

- (y) *Proposal Form*: The approved form on which the written offer or formal bid is to be prepared and submitted.
- (z) *Provide*: The term "provide" shall mean furnish, install, and connect.
- (aa) *Special Provisions*: Contract provisions specifically applicable to a particular project, i.e. time for completion, liquidated damages; and any changes or additions to the City Standard Specifications.
- (ab) *Standard Drawings*: Those drawings showing the details of design and construction of various City or District work and material standards. Generally, the work shown on these details is located within the public easement, right-of-ways, and common areas.
- (ac) *Standard Specifications*: The term sometimes used to refer to the latest edition of the "*City of Daly City General Conditions, Standard Specifications and Drawings*".
- (ad) *State Specifications*: Whenever, in these specifications, reference is made to the State Specifications and/or the State Standard Drawings, when indicated, it shall mean the latest edition of the State of California, Business and Transportation Agency, Department of Transportation Standard Specifications and/or Standard Plans. Whenever the following terms are used in the State Specifications or the State Standard Plans, the terms shall mean "*The City Engineer of the City of Daly City*":
  - . Department of Transportation
  - . Director of Transportation
  - . State Highway Engineer
  - . State Engineer
  - . State
- (ae) *State Standard Plan (State Standard Drawing)*: See *State Specifications*.
- (af) *Subcontractor*: An individual, partnership, firm or corporation supplying labor and materials, or labor only, or equipment for work at the site of the project whose contractual relationship is with the Contractor and not with the City.
- (ag) *Surety or Sureties*: The corporate bodies which are admitted surety insurers, which are bound by the Faithful Performance Bond and the Labor and Materials Bond with and for the Contractor, and which are engaged to be responsible for the entire and satisfactory fulfillment of the contract and for the payment of all lawful debts incurred in fulfilling the contract.
- (ah) *Trainee*: A person receiving on-the-job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.
- (ai) *Work on (at) the Project*: Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any Subcontractor complete and functional for the intended use.
- (aj) *Working Days*: Any day except Saturdays, Sundays, legal holidays observed by the City, and days on which the Contractor is specifically permitted by the Engineer to suspend construction operations on account of inclement weather or conditions resulting therefrom, or labor disputes.

3. CONFLICTING CONDITIONS

Any provision in any of the contract documents which may be in conflict or inconsistent with any of the paragraphs in any other contract document shall be void to the extent of such conflict or inconsistency in the following order of diminishing precedence:

- . Plans
- . Special Provisions
- . City Standard Specifications  
(Includes General Conditions and Standard Drawings)
- . State Standard Specifications and Standard Plans

Any work called for on the plans and not mentioned in the specifications, or vice versa shall be performed as though fully set forth in both.

4. PRE-CONSTRUCTION CONFERENCE

Between the period of awarding the contract and actual construction, it shall be the Engineer's option to call a pre-job conference for the project. The Contractor, and Contractor's representative in charge of the project shall be in attendance, and various utility companies affected by the work, may be invited to discuss the contractor's schedule, present possible problems and solutions concerning the individuals represented at the meeting, and make everyone aware of who and how to contact interest parties for emergencies and unforeseen problems.

A preliminary construction schedule for the project shall be submitted at this time outlining the major phases of work at the times they will be constructed.

5. PLANS AND SPECIFICATIONS

After the award of the contract, up to seven (7) sets of plans and Special Provisions will be furnished the Contractor at no cost. Sets in addition to these, as well as the *General Conditions, Standard Specifications and Drawings*, will be furnished, upon request, at the charge rates specified in the Notice Inviting Bids.

The Contractor shall keep a complete set of the *Contract Plans and Specifications*, including Addenda and Change Orders at the work site.

6. SUBMITTAL SCHEDULE

A submittal schedule shall be furnished to the Engineer to review within 10 working days after the Contract Award in accordance with the guidelines specified in City Standard Specifications, Section 01340.

7. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

The Contractor may be furnished additional instructions and detail drawings as necessary to carry out the work included in the contract and to clarify the design.

The additional drawings and instructions thus supplied to the Contractor will complement with the contract documents. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions. The Contractor and the Engineer will prepare jointly (a) a schedule, fixing the dates at which special detail drawings will be required, such drawings, if any, to be furnished by the Engineer in accordance with said schedule, and (b) a schedule fixing the respective dates for the submission of shop drawings, the beginning of manufacture testing and installation of materials, supplies and equipment, and the completion of the various parts of the work; each such schedule to be subject to change from time to time in accordance with the progress of the work.

All drawings signed by the Engineer and delivered to the Contractor after execution of the Agreement, and all revisions of these and the plans or other drawings, shall be deemed written instruction to the Contractor.

#### 8. RECORD DRAWINGS ("AS-BUILTS") AND PRECONSTRUCTION VIDEOS

The Contractor shall mark on one set of City furnished full size prints, , any and all deviations from plan dimensions, elevations or orientations to include without limitations the horizontal and vertical locations of all utilities encountered not originally shown on plans. The Contractor shall submit same in good condition to the Engineer upon completion of the job and before acceptance of the project. At the work site, the Contractor shall maintain a neat and legible set of marked prints which shall be updated at least once each day and shall be available to the Engineer for review. Progress payments may be withheld if as-built plans are not current to the stage of project at the time of Engineer's review. The Contractor shall review the updated record prints with the City at least once before requesting each progress payment. At the completion of construction, the Final Contract Payment shall be contingent upon delivery to the Engineer of one (1) set of full size plans on which the Contractor has transferred all "as-built" information.

Prior to initiation of any construction work, the Contractor shall, at his expense, provide to the City a copy of a video recording in VHS format showing clearly and completely existing conditions throughout the work site and the immediate adjacent areas. Contractor shall verify the scope of the video with the Engineer. Video shall be of at least 10 minutes in duration. The video taping shall be of good quality and shall document areas and items to be affected by the work including street pavement conditions, road improvements, existing trees and street scapes along the entire work route. The location of taping shall be clearly identifiable and a concurrent voice narrative in the recording shall describe concisely the project work and the noteworthy items affected by the project. The video tape shall be labeled as to project title and date of recording. The date of the day of recording shall be indicated in the video.

For projects when the size and scope of the project warrants less videography or fewer photographs, the Engineer may, at his discretion, approve reductions in requirements proposed by the Contractor.

#### 9. GRADE CERTIFICATES

For the following work Contractor shall provide to the City "as-built" Grade Certificates signed by a Land Surveyor or qualified Civil Engineer registered in the State of California for the following work:

- (a) top of curb and lip of gutter elevations at intervals of no more than 50 (fifty) feet, and at both ends of the curb returns;
- (b) back of sidewalk grades at intervals of 50 (fifty) feet;
- (c) rim and invert elevation of each drain inlet, manhole, and sewer structure;

- (d) roadway sub-base, base, and finish grade elevations for new roadway construction; and
- (e) finish grades for a grading operation.

Payment for providing the required "as-built" Grade Certificates shall be included in the unit bid prices for various bid items.

City may withhold the whole or any part of the final payment to such an extent as may be reasonably necessary to protect City from loss resulting from Contractor's failure to provide the required "as-built" Grade Certificates to City.

#### 10. SHOP OR SETTING DRAWINGS

The Contractor shall submit promptly to the Engineer shop or setting drawings prepared in accordance with the requirements of Section 01340, "*Submittals*," of the *Daly City Standard Specifications*.

#### 11. COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor is assumed to be familiar with all Federal, State, and local laws, codes, ordinances and regulations which in any manner affect those engaged or employed in the work or the materials or equipment used in or upon the site or in any way affect the conduct of the work on the project. No pleas of misunderstanding or ignorance on the part of the Contractor will in any way serve to modify the provisions of the contract.

The Contractor at all times shall observe and comply with all Federal, State, and local laws, codes, ordinances and regulations in any manner affecting the conduct of the work on the project, and the Contractor and Contractor's surety shall indemnify and save harmless the City, its subsidiary agencies and their officers, agents, and employees against any claims or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by Contractor, the Contractor's employees, or the Contractor's subcontractors.

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery and equipment shall be guarded and all hazards eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of any applicable law. The Contractor shall be solely responsible for safety of the project and all operations associated therewith.

All rules, orders, and regulations prescribed by State and Federal Agencies, including but not limited to Industrial Accident Commission (IAC) of the State of California and the California Occupational Safety and Health Administration (CALOSHA) shall be observed. The Contractor shall provide and maintain all necessary barriers, guards, temporary bridges, watchperson and lights. Warning lights in the form of lanterns or flares shall be in place and lighted on all construction work on public streets, highways, or rights-of-way from sunset to sunrise.

#### 12. EMPLOYMENT OF ILLEGAL ALIENS

During the performance of this contract, the Contractor agrees not to employ on such project any alien in the United States in violation of the Immigration and Nationality Act or any other law, convention, or treaty of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

The Contractor will include the provisions of the preceding paragraph in every subcontract so that such provisions will be binding upon each subcontractor.

13. CONTRACTOR'S OBLIGATIONS - COOPERATION WITH OTHERS

The Contractor shall and will, in a competent manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, except as herein otherwise expressly specified, necessary or proper to perform and complete all the work required by this contract, within the time herein specified, in accordance with the provisions of this contract and said specifications and in accordance with the plans and drawings covered by this contract and any and all supplemental plans and drawings, and in accordance with the directions of the Engineer as given from time to time during the progress of the work.

The Contractor shall furnish, erect, maintain and remove such construction plant and such temporary works as may be required. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the contract documents, and shall do, carry on, and complete the entire work to the satisfaction of the Engineer and the Owner.

At all times the Contractor shall cooperate with other contractors, city personnel and public, and to the fullest extent possible coordinate his work to provide the least inconvenience possible to others.

14. EMPLOYEES OF CONTRACTORS

The Contractor, or any subcontractor doing work on the project, shall employ such superintendents and workers as are careful, competent, and skilled in the trade for which they were hired with the exception of apprentices and trainees as described in Section 13. The Engineer may demand the removal from the project of any person or persons employed by the Contractor in, about, or upon the work who shall exhibit misconduct, incompetence, or negligence in the proper performance of their duties, or neglect or refuse to comply with the directions given by the authorized City personnel, and such person or persons shall not be employed on the project again without the written consent of the Engineer. Neither the City nor the Contractor shall employ or otherwise engage the service of any employee of the other party.

15. APPRENTICES AND TRAINEES

Apprentices will be permitted to work as such only when they are registered individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a state, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor.

Attention is directed to the provisions in Sections 1777.5 and 1777.6 of the Labor Code and in accordance with the regulations of the California Apprenticeship Council concerning the employment of apprentices by the Contractor or any subcontractor.

It shall be the responsibility of the Contractor to abide by the provisions of Sections 1777.5 and 1777.6 of the Labor Code and to require all subcontractors employed by or contracting with Contractor to abide by said provisions. Contractor shall furnish City, any and all evidence of compliance with these code sections when requested by City.

For willful failure to comply with Section 1777.5 of the Labor Code, the Contractor shall be denied the right to bid on a Public Works contract for a period of one (1) year from the date that such determination is made.

16. SUPERINTENDENCE BY CONTRACTOR

At the site of the work, the Contractor shall employ a construction superintendent who shall have full authority to act for the Contractor. It is understood that such representative shall be acceptable to the Engineer.

The Contractor shall give to the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the Engineer and inspectors and with other contractors in every way possible. The Contractor shall keep on the work at all times during its progress, a competent superintendent and any necessary assistants, all of whom shall be satisfactory to the Engineer.

The Contractor's superintendent shall not be changed except with the consent of the Engineer, unless this superintendent proves to be unsatisfactory to the Contractor and ceases to be in the Contractor's employ. The Contractor's superintendent shall represent the Contractor and all directions given shall be as binding as if given to the Contractor.

The Contractor shall conform to all instructions, rulings, and decisions of the Engineer, provided that the Contractor may require such in writing, and the Contractor shall be liable to the City for any failure to conform thereto without delay.

17. SUBCONTRACTING

The Contractor may utilize the services of specialty subcontractors on those parts of the work which, under normal contracting practices, are performed by specialty subcontractors.

The Contractor shall be fully responsible to the City for the acts and omissions of the Contractor, the Contractor's subcontractors, and of persons either directly or indirectly employed by them.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the General Conditions and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards terminating any subcontract that the City may exercise over the Contractor under any provision of the contract documents.

Nothing contained in this contract shall create any contractual relations between any subcontractor and the City.

In compliance with the provisions of Sections 4100-4114, inclusive, of the Public Contract Code of the State of California, and any amendments thereof, the Contractor shall not, without the written consent of the City, either:

- (a) Substitute any person as subcontractor in place of the subcontractor designated in the original bid, or permit any such subcontractor to be assigned or transferred or allow the subcontract work to be performed by anyone other than the original subcontractor listed in the bid without complying with Public Contract Code Section 4107.
- (b) Sublet or subcontract any portion of the work in excess of one-half of one percent (0.5%) of the Contractor's total bid, or ten thousand dollars (\$10,000) in the case of construction of streets and highways, whichever is greater, as to which no subcontractor was designated in the original bid. Subletting or subcontracting in this regard shall be permitted only in case of public emergency or necessity, and then only after a City finding reduced to writing as a public record of City setting forth the facts constituting the emergency or necessity.

If the Contractor fails to specify a subcontractor for any portion of the work to be performed under the contract in excess of one half of one percent (0.5%) of the Contractor's total bid, or ten thousand dollars (\$10,000) in the case of construction of streets and highways, whichever is greater, Contractor agrees to perform that portion.

If the Contractor violates any of the provisions of said Section 4100-4114, inclusive, of said Public Contract Code, or any amendments thereof, the Contractor violates this contract and the City may cancel the contract. After any such violation, the Contractor shall be penalized to the extent of twenty percent (20%) of the amount of the subcontract involved. Funds recovered through the application of this penalty will be paid to the State Treasurer.

18. SUBCONTRACT DOCUMENTS

All of the conditions set forth herein shall be part of every subcontract and shall be inserted by the Contractor into said subcontract, and shall further provide that the conditions hereof shall be binding upon each and every subcontractor.

19. SEPARATE CONTRACTS

The Contractor shall coordinate operations with those of other Contractors. Cooperation will be required in the arrangement for the storage of materials and in the detailed execution of the work. The Contractor, including subcontractors, shall keep informed of the progress and the detail work of other Contractors and shall notify the Engineer immediately of lack of progress or defective work on the part of other contractors. Failure of a Contractor to keep informed of the work progressing on the site and failure to give notice of lack of progress or defective work by others shall be construed as acceptance by the Contractor of the status of the work as being satisfactory for proper coordination with the Contractor's work.

20. ASSIGNMENTS

The Contractor shall not assign the whole or any part of this contract or any moneys due or to become due hereunder without written consent of the City. In case the Contractor assigns all or any part of any moneys due or to become due under this contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this contract.

21. NOTICE AND SERVICE THEREOF

Any notice to any Contractor from the City relative to any part of the contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted, by certified or registered mail, to the said Contractor's last given address, or delivered in person to said Contractor or authorized representative on the work.

22. SURVEYS

Contractor shall lay out all work from base lines, bench marks, and reference points, as shown on the drawings and as provided by the City.

23. PERMITS, LICENSES AND REGULATIONS

Contractor shall secure all necessary permits and licenses and pay all fees and taxes required by law and the costs therefor shall be included in the bid prices.

The Contractor shall be required to have a State of California Department of Transportation (CALTRANS) Encroachment Permit for all work performed within State rights-of-way.

No charges will be made for City-issued permits. The Contractor and all subcontractors shall pay for and receive a Daly City Business License(s).

The Contractor shall comply with all laws, ordinances, rules, orders, and regulations relating to the performance of the work, the protection of adjacent property, and the maintenance of passageways, guard fences, or other protective facilities.

24. REPORTS, RECORDS AND DATA

The Contractor shall submit to the City such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the Owner may request concerning work performed or to be performed under this contract.

The Contractor agrees to provide any and all information and file any and all necessary forms as required by any State or Federal Agency, or required under any State or Federal law.

25. PAYROLLS AND BASIC RECORDS

The Contractor shall submit weekly a copy of all payrolls to the City within seven (7) calendar days after work has been performed. The copy shall be accompanied by a statement signed by the employer or employer's agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Department of Industrial Relations and that the classifications set forth for each laborer or mechanic conform with the work he performed. The Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors.

26. UNDERGROUND SERVICE ALERT (USA) MARKINGS

After work has been completed on the project and before requesting final inspection, the contractor shall, at his own expense, remove all USA markings and such other markings that were painted on the pavement, sidewalk, curb, etc. used to guide the contractor in the pursuance of his work, using methods acceptable to the Engineer. Removal of said markings shall not, in any way deface, destroy or otherwise render surface of structure unsightly or aesthetically inferior to the adjacent surface.

27. ERRORS AND DISCREPANCIES NOTED BY CONTRACTOR

The Contractor shall supervise the work. The Contractor shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Engineer, any error, inconsistency or omission discovered.

If the Contractor, either before commencing work or in the course of the work, finds any discrepancy between the plans and specifications as they relate to the physical conditions at the site of the work, or finds any error or omission in any of the drawings or in any survey, the Contractor shall promptly notify the Engineer, in writing, of such discrepancy, error, or omission.

If the Contractor observes that any drawings or specifications are at variance with any applicable law, ordinance, regulation, order, or decree, the Contractor shall promptly notify the Engineer, in writing, of such conflict and shall not proceed with the work until so ordered by the Engineer. The Contractor shall not take advantage of any apparent errors or omissions in the plans or specifications.

The Contractor shall promptly and before such conditions are disturbed, notify the Engineer in writing of (1) subsurface or latent physical conditions of the site differing materially from those indicated, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

Until instructions are given, any work done by the Contractor that is covered under this Section, either directly or indirectly, after discovery of such error, discrepancy, or conflict, will be at Contractor's own risk and Contractor shall bear all costs arising therefrom. The Contractor may continue to work in areas that are not affected.

## 28. CONSTRUCTION PROJECT SIGNS

The Contractor shall provide and maintain two (2) construction project information signs in the vicinity of the construction area during the construction period as per contract stipulations. Construction signs shall be in place at the start of construction activity. Liquidated damages may be assessed if signs are not installed within forty (40) calendar days of project award. Location of sign will be as directed by the City. Materials and design information for the signs shall be as specified in the project drawings.

## 29. POTHOLING EXISTING UTILITIES/HIGH RISK FACILITIES – DIFFERING SITE CONDITIONS

- (a). At least forty-eight (48) hours prior to beginning any underground excavation (including potholing) one foot (1') or more in depth, the Contractor shall notify Underground Service Alert at (800) 642-2444 for location and marking of participating existing utilities. The Contractor shall also notify the Engineer at least forty-eight (48) hours prior to beginning potholing operation, so that the Contractor's operations may be observed.
- (b). The precise location of underground facilities can only be determined by careful probing or hand digging in compliance with Article 6 of the OSHA Construction Safety Orders which states in part:

*"Prior to opening an excavation, effort shall be made to determine whether underground installations, i.e., sewer, water, fuel, electric lines, etc., will be encountered, and if so where such underground installations are located. When the excavation approaches the approximate location of such an installation, the exact location shall be determined by careful probing or hand digging, and, when it is uncovered, adequate protection shall be provided for the existing installation."*

The location of known existing utilities and pipelines are shown on the Drawings in their approximate locations. Some of the locations include multiple conduits. The Contractor shall exercise care in avoiding damage to those facilities which are to remain in service subsequent to the construction of the particular new facility involved and will be held responsible for their repair and other related costs if damaged. The Contractor shall also exercise care in maintaining those pipes and facilities required for continuing operation of the existing facilities until such time as they can be abandoned. There is no guarantee that all utilities or obstructions are shown or that the locations indicated are accurate.

- (c). The Contractor shall exercise extreme caution in working in the area adjacent to the existing pipelines and utility services. It is essential that all the existing facilities be maintained in service. Construction of the connections between the existing facilities and the new facilities shall be at times and during periods acceptable to the City. The Contractor shall advise the Engineer in writing of his proposed construction schedule for these connections at least forty-eight (48) hours in advance.
- (d). The Contractor shall, at least five (5) days before construction in the vicinity, uncover all piping and conduits, and confirm the clearances (potholing), where crossings, interference, or connections are shown on the Drawings, prior to the preparation of pipe shop drawings, or trenching or excavating for placement of any pipe or structures, to determine actual elevations. New pipelines shall be laid to such grade as to clear all existing facilities which are to remain in service. If the Contractor does not expose all required utilities, the Contractor shall not be entitled to additional compensation for work necessary to avoid interference nor for repair to damaged utilities. Excavations around underground electrical ducts and conduits shall be performed using extreme caution to prevent injury or damage to workmen and to the electrical ducts or conduits.

Contractor shall adequately protect sanitary sewer laterals, water service laterals, and all utilities crossing the proposed construction trench whether they are shown on the plans or not. All cost of potholing shall be considered as included in the unit price of the pipeline, and no additional compensation shall be allowed.

- (e). If the Contractor, at any time, encounters subsurface and/or latent conditions at the site materially differing from those shown on the plans or stated in the specifications, the Contractor shall give written notice to the Engineer and the affected utility company, on the same day as discovery of such conditions before they are disturbed. The Engineer will thereupon promptly investigate the conditions, and if conditions are found which materially differ from those shown on the plans or stated in the specifications, the Engineer will at once make such changes in the plans and/or specifications as necessary, and any increase or decrease of cost resulting from such changes will be adjusted in the manner provided in the Section entitled "*Changes in Work*" of these General Conditions. The City will not accept any claim for delay that is not substantiated and documented as required by this Section. The Contractor shall supply to the Engineer a written report detailing the personnel and equipment idled, hours involved and duration of work stoppage. A rate of work production defined as, contractor's estimate of number of days to perform a certain work, shall not be considered as a basis for claims for delays. The City will not consider any claims for work stoppage unless the stoppage had been agreed upon by the City Engineer.
- (f). Until instructions are given, any work done by the Contractor that is covered under this Section, either directly or indirectly, after discovery of such error, discrepancy, or conflict, will be at the Contractor's own risk and the Contractor shall bear all costs arising therefrom. The Contractor may continue the work in areas that are not affected.
- (g). In addition, pursuant to Public Contract Code, Section 7104, any public works contract which involves digging trenches or other excavations that extend deeper than four feet below the surface shall provide the following:
  - (1) That Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:
    - a. 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.
    - b. Subsurface or latent physical conditions at the site differing from those indicated.

- c. 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.
- (2) That 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 in the contract.
  - (3) That 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 contracting parties.
- (h). No excavation exceeding 6" in depth below existing grade shall be performed except by hand operated tools until the location and alignment vertical and horizontal of all high risk facilities, if any, within 100 feet of proposed work have been field identified.
- (1) High risk facilities include but are not limited to the following:
    - a. Pipelines greater than 6" in diameter or pipelines operating at pressure greater than 60 PSIG conducting natural gas, petroleum products or other toxic or flammable gas or liquid, and
    - b. Electrical underground conductors with a potential to ground of more than 300 volts either directly buried or in duct or conduit and which do not have concentric grounded conductors or other effectively grounded metal shields or sheaths.
    - c. Fiber optic cables and such other utilities the Engineer may deem as high risk.
  - (2) All excavation within 2 feet in all directions of high risk facilities shall be carried out by hand tools unless a previous written approval from the Engineer has been obtained.
  - (3) The minimum spacing between potholing locations along high risk facilities shall depend on the clearance between proposed excavation and high risk facility as follows:
 

Interval Between Potholing (Feet)	Clearance Between Edge of Proposed Excavation and High Risk Facility
100	> 2'
200	> 8'
300	> 25'
400	> 50'
500	> 100'
- (i). No claim of the Contractor under this clause shall be allowed unless the Contractor has given the written notices and reports required as set forth above, provided, however, that the time prescribed therefor may be extended by the City.

30. REMOVAL/RELOCATION OF PUBLIC SERVICE OR OTHER EQUIPMENT OR STRUCTURES

In case it shall be necessary to remove or relocate any telephone, telegraph, or electric power transmission poles, gas pipes, water pipes, electrical conduits, or other underground structures, or any above ground structures, the Contractor shall notify immediately the Engineer, and the affected utility or private owner. Attention is directed to the fact that overhead and underground utilities may cross the work area.

The Contractor's attention is directed to the requirements of Government Code Section 4216 for obtaining an inquiry identification number prior to excavation in any public street or right-of-way.

31. SHUTDOWN/TIE-INS OF EXISTING UTILITIES

Planned shutdowns to portions of existing utilities shall be during periods of minimum use such as nights, weekends, and holidays at no additional cost to the City. The Contractor shall program the work so that service will be restored in the minimum time possible, and shall cooperate with the City in reducing shutdowns to a minimum. No utility interruption will be permitted without the prior written approval of the Engineer.

The Contractor shall make six (6) working days advance written request through the Engineer. The Engineer will verify the necessary shutdown procedures, give required notices, and provide written approval to contractors at least two (2) days before the schedule shutdown date. No work may proceed without Engineer's approval.

City personnel will notify impacted customers at no charge for City-funded projects. City will charge Contractor for this notification on non-City funded projects or developments.

32. CONSTRUCTION SCHEDULE, PROGRESS MEETINGS, COMMENCEMENT OF WORK, AND PERIODIC ESTIMATES

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the City a construction progress schedule in a form satisfactory to the City, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. Progress schedules for most City construction projects shall conform to Section 01310, "*Construction Schedule A*," of the *Standard Specifications*, except when the base bid exceeds \$1 million, then progress schedules shall conform to Section 01311, "*Construction Schedule B*."

Every two weeks, the Contractor shall provide a "two-week look-ahead schedule" of work to be performed on each day; any deviation from said schedule must be requested at least two (2) days in advance for approval by the City.

Construction progress meetings shall be held every other week and are mandatory. The contractor's job superintendent or other persons responsible for the timely progress of the work shall be required to attend.

The Contractor shall also furnish on forms to be supplied by the City (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

The Contractor shall commence work on the project within ten (10) calendar days after receiving the Notice to Proceed from the City. The Contractor shall notify the Engineer at least two (2) work days in advance of the time he intends to start work.

The Contractor shall conduct the work in such a manner and with sufficient materials, equipment, and labor as is considered necessary to insure its completion within the time limits set forth herein. Should the prosecution of the work for any reason be discontinued by the Contractor, with the consent of the Engineer, the Contractor shall notify the Engineer at least twenty-four (24) hours in advance of resuming operations.

### 33. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the Contractor and City that the date of beginning and the time for completion as specified in the contract of work to be done hereunder are ESSENTIAL CONDITIONS of this contract; and it is further mutually understood and agreed that the work embraced in this contract shall be commenced on or before the date to be specified in the Notice to Proceed.

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the City that the time for the completion of the work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual conditions prevailing in this locality.

If the said Contractor shall neglect, fail or refuse to complete the work within the time herein specified, or any proper extension thereof granted by the City then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay to the City the amount specified in the contract, not as a penalty but as liquidated damages for such breach of contract as hereinafter set forth, for each and every day that the Contractor shall be in default after the time stipulated in the contract for completing the work. Liquidated damages as included in this agreement are authorized by California Government Code Section 53069.85, and shall not exceed those standards as set by statute. Liquidated damages will also be assumed by any surety on a performance bond where the Contractor would have been liable for liquidated damages under the agreement.

The said amount is fixed and agreed upon by and between the Contractor and the City because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain, and said amount is agreed to be the amount of damages which the City would sustain and said amount shall be retained from time to time by the City from current periodical estimates.

It is further agreed that time is of the essence on each and every portion of this contract and the specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence to this contract. Provided, that the Contractor shall not be charged with liquidated damages or any excess cost when the City determines that the Contractor is without fault and the Contractor's reasons for the time extension are acceptable to the City; Provided further, that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of the work is due:

- (a) To any preference, priority, or allocation order duly issued by the federal, state, regional, or local governmental agency;
- (b) To unforeseeable cause beyond the control and without the fault or negligence of the Contractor, including catastrophic events, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather;

When the contract completion time is specified in Calendar days, or by a date specific, it shall be deemed to include delays due to normal rain or inclement weather and no time extension may be approved therefor; and

- (c) To any delays of subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this Section; Provided further, that the Contractor shall, within ten (10) calendar days from the beginning of such delay, unless the City shall grant a further period of time prior to the date of final settlement of the contract, notify the City, in writing, of the cause of delay, who shall ascertain the facts and extent of the delay and notify the Contractor within a reasonable time of its decision in the matter.

The failure to so notify City shall constitute a waiver thereof, provided that in case of a continuing cause of delay only one (1) claim shall be necessary.

A request for an extension of time or the granting of an extension of time shall not constitute the sole basis for any claim against the City for additional compensation.

In the instance where a time extension has been granted for a delay deemed by the City to be its responsibility, and where that delay is considered to be unreasonable under the circumstances and not within the contemplation of either the City or the Contractor, the extension of time shall not be construed to preclude the recovery of damages by the Contractor pursuant to Section 7102 of the Public Contract Code.

For each and every working day that the work remains unfinished after the time limit designated in the Notice Inviting Bids, and any extensions of time granted under this Section, the sum set forth in the Special Provisions shall be paid by the Contractor to the City, or may be deducted by the City from any monies due the Contractor.

Liquidated damages of specified amount per calendar day may be assessed for each designated activity not completed within the specified time limits. Such activities include, but are not limited to the following:

- (1) All contract activities comprising total contract work except certain minor corrective work not affecting the full use of the work completed.
- (2) When "NO PARKING" signs are posted on a street block without any work being in progress within the indicated time. "NO PARKING" signs shall not be placed on any street block where continuous construction activity is not to take place during the hours of indicated no-parking restriction.
- (3) For each street segment on which work proceeds beyond a continuous period of 14 calendar days.
- (4) For each day of unauthorized access disruption.
- (5) For each day of unauthorized interruption of the traffic signal operations.
- (6) For each day of unauthorized interruption of the street light operations.

#### 34. CONTRACTOR STORAGE AREA

The Contractor shall be responsible for making provisions to obtain a job trailer and/or storage area and shall make arrangements for any utility services required. No material or rubber tired equipment shall be stored within the public street right-of-way, or other City property without written permission. However, "steel track" equipment that is in current, ongoing use may, upon prior written approval, be stored in designated parking lanes along public streets adjacent to work. When no longer in current use, said equipment shall be transported off the public right-of-way.

35. CONTRACTOR'S PARKING

Vehicles owned by contractor's employees shall be parked in a way that will allow City operations to continue unhindered. Contractor shall coordinate with and obtain approval from City prior to any use of City parking areas, driveways, or vehicle accesses.

36. CONSTRUCTION WORK HOURS REGULATIONS

Hours of operation for work under the contract shall be 8:00 a.m. to 5:30 p.m., Monday through Friday. There will be no start-up of machines or equipment, no delivery of materials or equipment, and no cleaning or servicing of machines or equipment prior to 7:30 a.m. or after 6:00 p.m. Additionally, there will be no construction work, deliveries, and servicing of the machines and equipment between 6:00 p.m. and 7:30 a.m. and at any time during Saturdays, Sundays and Legal City Holidays. Exceptions to these time restrictions may be granted by the Engineer for one of the following reasons: (1) inclement weather affecting work, (2) emergency work, or (3) other work, if work and equipment will not create noise or conditions that may be unreasonably offensive to neighbors as to constitute a nuisance. The Engineer must be notified and approval given, in writing, in advance of said work.

More severe or limited working hours may be incorporated into individual projects.

37. CONTRACTOR USE OF PREMISES

- (a) During Construction, the Contractor **shall not** have exclusive use of the premises for operations. Existing building tenants and the public shall continue regular daily activities. Work activities must be coordinated to provide for uninterrupted use by the City and the public. Access to the Entry and emergency-exiting routes must at all times be maintained open and obstructed.
- (b) Contractor may perform work between the hours of 8:00 AM and 5:00 PM throughout the week, Monday through Friday. Additional compensation for overtime is not a factor of these contract documents. Should after hours or weekend inspection be requested Contractor would be liable for City inspector's overtime charges.
- (c) Care shall be taken by the Contractor to reduce dust wherever possible, and clean up of the areas shall be made on a continuous basis. Exterior dirt, dust debris, building materials etc. shall be cleaned up daily at a minimum.

38. OVERTIME REQUIREMENTS

The Contractor shall forfeit, as a penalty to the City, twenty-five dollars (\$25.00) for each worker employed in the execution of the contract by the Contractor, or any subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one (1) calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815 thereof, inclusive, except that work performed by employees of Contractors in excess of eight (8) hours a day and forty (40) hours during one (1) 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 (1.5) times the basic rate of pay as provided for in Section 1815.

39. SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

In order to protect the lives and health of the Contractor's employees under the contract, the Contractor shall comply with all pertinent provisions of applicable Federal, State and local laws; and shall maintain accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract.

In addition to any Federal, State or local requirements mandated by law, the Contractor shall conform with all applicable requirements and procedures specified in the current edition of the "*City of Daly City Contractor Safety Requirements*". A copy of this document will be made available to the Contractor either with the Notice to Proceed or at the preconstruction conference.

In any case Contractor alone shall be responsible for the safety, efficiency, and adequacy of the Contractor's plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

40. HAZARDOUS MATERIALS AND WORKER SAFETY

(a). Contractor shall neither waste nor deposit on this project any hazardous materials, including but not limited to asbestos. Hazardous material spills that occur as a result of either equipment failures or vandalism, including adjacent contaminated soils, shall be removed and transported to an environmentally approved disposal site. All removal and transportation costs shall be the responsibility of the Contractor.

(b) Contractor shall furnish the City Engineer the following as applicable:

- (1) List of hazardous substances to be used, and copies of Material Safety Data Sheets (MSDS) for each listed item.
- (2) Description of where, when and how the material will be used on site.
- (3) Description of methods and equipment to be employed to safeguard the public and City and Contractor's employees.
- (4) Specific contacts for questions on MSDS.

(c) Contractor shall post in a conspicuous area at his field office the following:

- (1) Emergency telephone numbers 911 and 991-8092. Emergency and paramedic ambulance service number 991-6455 for Seton Medical Center.
- (2) Log of project accidents.
- (3) MSDS for all hazardous materials at the construction site.

(d) Contractor shall have at least one employee trained on confined space entry regulations at the site whenever there are open trenches or underground work going on.

- (e) Job site shall be kept orderly, clean and free of dust and debris. Dust and moisture shall be prevented from entering the areas adjacent to construction areas.

41. MATERIALS, SERVICES AND FACILITIES

It is understood that, except as otherwise specifically stated in the contract documents, the Contractor shall provide and pay for all materials, labor, tool, equipment, water, light, power, transportation, superintendence, temporary construction of every nature, and all other services and facilities of every nature whatsoever necessary to execute, complete, and deliver the work within the specified time.

Any work necessary to be performed after regular hours, on Saturdays, Sundays or Legal Holidays, shall be performed without additional expense to the City.

All equipment, materials and supplies called for by the plans and specifications shall be new unless otherwise specified.

42. CONTRACTOR'S TITLE TO MATERIAL

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that Contractor holds good title to all materials and supplies used in the work, free from all liens, claims or encumbrances.

43. INSPECTION AND TESTING OF MATERIALS

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the City. The City will pay for all laboratory inspection service direct, and not as a part of the contract.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for users intended.

In the event any materials, equipment or work are required by law, ordinance or regulation of any public authority, or by the specifications or otherwise, to be specifically tested or approved, the Contractor shall give the Engineer timely notice of its readiness for inspection or test, and of the date set for such if the inspection is to be made by other than the Engineer.

Inspection or tests of materials shall be made where practicable at the source of supply, and the Contractor shall furnish the Engineer certified copies, in triplicate, of all factory and mill test reports. Any materials shipped by the Contractor from a factory or mill prior to having satisfactorily passed such testing and inspection by a representative of the City shall not be incorporated in the work, unless the Engineer has notified the Contractor in writing that such testing and inspection will not be required.

44. "OR EQUAL" CLAUSE

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a

standard; and, any material, article or equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Engineer's written approval.

Substantiating data supporting the request for substitute of an "equal item" must be submitted thirty-five (35) calendar days following the contract award. If, in the judgment of the Engineer, the proposed substitute does not equal the material, process or article specified, the Contractor shall furnish the material, process or article as specified. Equipment, materials, and supplies described in words which have a well-known technical or trade meaning shall refer to such recognized standards.

Proposed alternate equipment, materials and methods, not otherwise set forth in the plans and specifications, must be submitted for approval by the Engineer at least one (1) week prior to the opening of bids. Failure to comply with this provision will automatically disqualify such alternate substitutions.

All Federal and State laws and regulations now imposed by competent authority and relating to any materials required to be furnished under the specifications are hereby made controlling and a part of the specifications.

#### 45. PATENTS, LICENSES AND ROYALTY FEES

The Contractor shall hold and save the City its subsidiary agencies and their officers, agents, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the City, unless otherwise specifically stipulated in the contract documents.

If the Contractor uses any design, device or materials covered by letters, patent or copyright, the Contractor shall provide for such use by suitable agreement with the City of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or Contractor's Sureties shall indemnify and save harmless the City of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the City, its subsidiary agencies, and their officers, agents, and employees for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

#### 46. WEATHER CONDITIONS

In the event of temporary suspension of work, or during inclement weather, or whenever the Engineer shall direct, the Contractor will, and will cause the Contractor's subcontractors to protect carefully their work and materials against damage or injury from the weather. If, in the opinion of the Engineer, any work or materials shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect the Contract work, such materials shall be removed and replaced at the expense of the Contractor.

The Contractor will be granted a non-compensable time extension for weather-caused delays over and above what would be expected in an average year. The determination to grant a non-compensable weather-related delay will be at the sole discretion of the Engineer. Extensions of time for adverse weather will not be granted in any case unless the Contractor establishes, to the satisfaction of the Engineer, that such adverse weather was:

- (a) responsible for the delay of the completion of the work as whole, and

- (b) was more severe than the average climatic range and usual weather conditions prevailing at the locality of the site over the entire Contract time period.

Pursuant to Public Contract Code Section 7104 Contractor shall not be responsible for the cost of repairing or restoring damage to the work, which damage is determined to have been proximately caused by an act of God, in excess of 5 percent of the contracted amount, provided, that the work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the awarding authority.

#### 47. PROTECTION OF WORK AND PROPERTY - EMERGENCY

##### A. General:

The Contractor shall at all times safely guard the public and City property from injury or loss in connection with this contract, and shall at all times safely guard and protect the Contractor's own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury whether by vandalism or any other cause.

In case of emergency which threatens loss or injury of property and/or safety of life, the Contractor will be allowed to act, without previous instructions from the Engineer, in a diligent manner. The Contractor shall notify the Engineer immediately thereafter. Any claim for compensation by the Contractor due to such extra work shall be promptly (on the same day) submitted to the Engineer for approval.

When the Contractor has not taken action but has notified the Engineer of an emergency threatening injury to persons or damage to the work or any adjoining property, the Contractor shall act as instructed or authorized by the Engineer.

The amount of reimbursement claimed by the Contractor on account of any emergency action shall be determined in the manner provided in Section 66 of the General Conditions.

##### B. Special Protection – Existing High-Voltage Series Circuit Street Lighting:

In various City areas existing underground conduit provides service for high-voltage series street lighting. Damage to such conduit and wiring can result in extremely high financial liability for the damaging agency or contractor. Prior to initiating construction, the location of any such circuitry shall be verified. During construction extra caution shall be taken to protect the existing high voltage street light conduit in the project area. In addition to any locations of street light circuits provided by USA, the agency or contractor shall employ a utility locating service to mark the alignment of such circuits within the entire project area. Contractor shall positively locate street light conduit by hand digging in areas where the new main or new services will cross the street light circuit. Conduit is typically 2" diameter asbestos-cement transite conduit and may be encased in concrete. Agency or contractor shall give 24 hour notice prior to excavating near street light conduits. Agency or contractor must be present at the time of excavation. Conduit across trenches shall be supported as required. If conduit is damaged the agency or contractor shall immediately notify the Engineer. The agency or contractor shall be responsible for making immediate repairs at their expense. Failure to proceed with repairs within 60 minutes of causing damage to the street light circuit shall result in the City arranging for repairs to be made and charging the agency or contractor for all expenses associated with the repairs. Note: The conductor cannot be spliced. Pulling new conductors between street lights may require the temporary removal of the adjacent street light poles to allow direct access to the conduit risers.

48. USE OF PREMISES, PRESERVATION OF PROPERTY AND DAMAGES

The Contractor expressly undertakes at the Contractor's own expense:

- (a) To take every precaution against injuries to persons or damage to property.
- (b) To store apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of work or the work of any other contractor.
- (c) To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.
- (d) Cleaning of all affected streets and sidewalks. In addition clean up shall include all refuse, rubbish, scrap materials, and debris caused by the Contractor's operations, to insure that at all times the site of the work shall present a neat and orderly appearance. As a minimum, said cleanup operations shall be performed at the end of each work day; and more frequently shall be performed as required by contract operations and/or as directed by the Engineer.
- (e) To effect all cutting, fitting or patching of work required to make the same to conform to the plans and specifications and, except with the consent of the Engineer, not to cut or otherwise alter the work of any other Contractor.
- (f) To furnish watchpersons as required to protect the work on the project. The Contractor is responsible for the safety of the work on the project and shall, at the Contractor's own expense, repair all damage done to the work before final acceptance.
- (g) All costs associated with required repair or replacements to damage caused by Contractor operations.
- (h) To continually maintain adequate protection of all of Contractor's work and materials from damage, destruction or loss and shall protect the City's property from injury or damage arising in connection with this contract.

The Contractor shall repair damage, replace damaged items, and restore all removed or damaged existing improvements occurring from the Contractor's operations to pursue completion of the contract. The repairs and replacement shall be to the satisfaction of the Engineer and according to City standards and practices. The minimum repair or replacement shall be equal to surrounding existing conditions, or better, and the Engineer's decision as to acceptable repair or replacement shall be final. The burden of proof as to whether there was existing damage or new damage by the Contractor shall rest with the Contractor. This is a non-payment item.

- (i) To exercise care to avoid damage to existing improvements or facilities, utilities, and adjacent property, that are not to be removed or disturbed.

If such objects are damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The minimum repair or replacement shall be final. The burden of proof as to whether there was existing damage or new damage by the Contractor shall rest with the Contractor.

- (j) To hereby assume all risk and damage to the Contractor's work and materials from fire, earthquakes, storm, vandalism, and/or other causes prior to the completion and acceptance of the work and shall, at the Contractor's own cost and expense, repair and/or replace any work or materials damaged or destroyed.

49. CONTINUOUS USE OF EXISTING BUILDING

Should the contractor, after the contract time has elapsed, request a shutdown of the existing building prior to securing a Temporary Certificate of Occupancy for the new building, contractor shall reimburse the City for the City's costs and for any loss of event rental income as may be deemed applicable.

50. MAINTAINING PUBLIC AND TRAFFIC SAFETY

The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and abutting property owners, and he shall have under construction, no greater length or amount of work than can be prosecuted properly with due regard to the rights of the public.

The fire department shall be notified a minimum of 48 hours prior to any proposed street closure or water shutdown or other needed utility interference. Date, time, location, and estimated time of closure shall be provided. In addition, this information shall be confirmed on the day of closure, prior to such closure.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic. All public traffic shall be permitted to pass through the work with as little inconvenience and delay as possible.

Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall furnish, erect, and maintain, at the Contractor's expense and without cost to the City, fences, barricades, lights, signs, and other devices as are necessary to prevent accidents or damage or injury to the public.

Should the Contractor appear to be neglectful or negligent in furnishing warning and protective measures as above provided, the Engineer may direct attention to the possible existence of a hazard and the necessary warning and protective measures shall be furnished and installed by the Contractor at the Contractor's expense. Should the Engineer point out the inadequacy of warning and protective measures, such action on the part of the Engineer shall not relieve the Contractor from responsibility for public safety or abrogate obligation to furnish and pay for these devices.

Should the contractor fail to provide protective work, materials or measures in a satisfactory and timely manner, the City shall have the right to have said work, materials or measures performed by others. Contractor shall be liable for all associated costs including ancillary costs incurred by City personnel in effecting, administering or inspecting the required works.

51. HAULING

Hauling of any earth, sand, gravel, or waste materials, including excess excavated materials, rock, trash and debris, over any public street, alley, or other public place, requires prior approval of the City Engineer and an acceptable haul route is required.

52. MAINTAINING ACCESS

The Contractor shall maintain all existing pedestrian walkways and crosswalks through the project limits, or provide acceptable temporary access to the facilities through the construction zones. The location and details for such temporary walkways shall be submitted to the Engineer for approval.

The Contractor shall maintain pedestrian and vehicular access to all portions of the property. In the event an area must be closed temporarily, the Contractor shall obtain the Engineer's written approval at least 72 hours in advance. Minimum information required for City approval is the exact location, date and time of closure, time of start and finish and alternate access route or detour.

Liquidated damages may be assessed for failure to maintain access.

Full compensation for provision of access facilities and for maintaining access will be considered as included in the payment for the various Contract Bid Items, and no separate payment will be made therefore.

53. *"NO PARKING"* IN CONSTRUCTION ZONES

The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to the public and abutting property owners.

The placement of "NO PARKING" signs shall be governed by the following rules and regulations:

- "No Parking" signs shall be furnished and approved by the City.
- The signs shall indicate the Day, Date and Time the "No Parking" restriction shall be effective. Information shall be written by the contractor in water proof ink and shall be clearly legible.
- Parking restrictions shall be allowed only between the hours of 8:00 am and 5:00 pm, or as stipulated in writing by the City.
- The signs shall be stapled on both sides of barricades and a minimum of three (3) barricades shall be placed on the side of the street where the restriction is required. The signs shall be placed at a maximum spacing of 100', or as required by the City.
- The signs shall be in place at least 48 hours in advance of work that requires no parking and shall remain in place while the construction activity requiring parking prohibition is in progress.

"No Parking" restriction signs shall be removed from areas where not warranted. The Contractor may be required to pay liquidated damages at the rate specified in the Special Provisions if the Contractor fails to perform any work justifying the posting of *"NO PARKING"* signs on each and every day the signs prohibit parking.

Should Contractor reschedule or delay scheduled work, Contractor shall be responsible for all notifications of all affected homeowners, immediately upon decision to reschedule or delay operations. Contractor shall not begin any rescheduled or delayed operations until forty-eight (48) hours after notification.

Traffic control shall be in accordance with the California Department of Transportation Traffic Manual. In addition to providing signs, warning lights, reflectors, barriers, and other necessary safety devices and measures, the Contractor shall provide sufficient flaggers to direct vehicular traffic through the construction areas when construction limits the roadway to one lane of vehicular traffic.

No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's work, and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.

Should the Contractor appear to be neglectful or negligent in furnishing warning and protective measures, as above provided, the Engineer may direct attention to the existence of a hazard, and the necessary warning and protective measures shall be furnished and installed by the Contractor at his expense.

54. CLEANUP AND REMOVAL OF DEBRIS

The Contractor shall remove all obstructions which interfere with the completion of the work. The cost of removing these obstructions shall be included as a part of each individual intersection bid item for their removal. These obstructions may be guardrails, spillway assemblies, etc.

Those guardrails, barricades, street signs, roadway landscaping, etc., which are required to complete work shall be replaced, or as directed by the Engineer. All remaining guardrails, barricades, street signs, etc., which in the judgment of the Engineers are of value but are not required to be replaced, shall be carefully cleaned and stockpiled at locations designed by the engineer. Items which have no value to the City shall be disposed of by the Contractor as provided in Section 7-1.13, "*Disposal of Material Outside the Highway Right-of-Way*," of the *State Specifications*.

When fences within the right of way are designated on the plans to be removed, the Contractor shall carefully remove and stockpile them on the adjacent property. The cost of removing and stockpiling those fences, which are to remain the property of the property owners, shall be included in this item.

Fences, walls, and any other structures which are not designated to be removed shall be left in place. Any damage to these shall be repaired by the Contractor entirely at his expense to the lines and grades designated by the Engineer.

Before final payment, to remove all surplus material, falsework, temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from Contractor's operations, and to dispense of same outside the project area in a lawful manner to the satisfaction of the Engineer, unless otherwise specified, with the result that the site is left in a neat, orderly condition.

55. HOLD HARMLESS

The Contractor and sureties shall indemnify and hold harmless the City, its subsidiary districts, the Agency and their officers, officials, employees, volunteers and agents from all claims, suits, or actions of every name, kind, and description, including attorney's fees, based on negligence or willful misconduct, brought for, or on account of, injuries to or death of any person or persons or damage to property resulting from the performance of any work by the Contractor or the Contractor's employees or subcontractors and their employees and suppliers required by this contract or by the City, its subsidiary agencies, their officers, officials, employees, volunteers, and agents.

Further, the Contractor and sureties shall indemnify and hold harmless the City, its subsidiary districts, the Agency, and their officers, officials, employees, volunteers and agents from all claims suits, or actions of every name, kind, and description by, or in consequence of, neglect in safeguarding the work on the project, or, by or account of, any claims or amount recovered by an infringement of patent, trademark, or copyright, or from any claim or amount arising or recovered under the Workers' Compensation Law, or any other law, ordinance, order or decree, and so much of the money due Contractor under the contract, as shall be considered necessary by the City, may be retained, or in case no money is due, the Contractor's sureties shall be held until any damages shall have been settled and satisfactory evidence to that effect furnished to the City.

The duty of the Contractor to indemnify and hold harmless, as set forth in this section, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the Contractor to indemnify the City, its subsidiary districts, the Agency and their officers, agents, employees, and servants against any responsibility to liability in contravention of Section 2782 of the California Civil Code.

56. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

The Contractor shall not commence work under the contract until all insurance required under this Section has been obtained, including certificates of insurance evidencing the required coverage, and such insurance has been approved by the City. The Contractor shall not allow any subcontractor to commence work on a subcontract until all similar insurance required of the subcontractor has been so obtained and approved.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from the Contractor's operations under this Contract. Coverage required hereunder shall operate as Primary insurance.

(a) Workers' Compensation and Employers' Liability Insurance:

- (1) The Contractor shall take out and maintain during the life of the contract, Workers' Compensation and Employers' Liability Insurance providing full Statutory Coverage for all of Contractor's employees employed in connection with the work, and, in case any work is sublet, the Contractor shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employee engaged in hazardous work under the Contract is not protected under the Workers' Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide appropriate insurance for the protection of his employees not otherwise protected and to provide written evidence of such insurance to the City of Daly City.

The required insurance shall cover any assignee of the Contractor or any subcontractor performing or causing to be performed any work or labor in fulfillment of the provisions of the contract. The insurance shall be taken out with a responsible insurance carrier authorized under the laws of the State of California and satisfactory to the City and with not less than \$1,000,000 Employers' Liability Protection.

Confirmation that Worker's Compensation and Employers' Liability Insurance is present, pursuant to the Contract, shall be provided by a separate endorsement to the Certificate of Insurance.

In signing the contract, the Contractor makes the following certification, required by Section 1861 of the California Labor Code:

*"I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this Agreement."*

- (2) In the alternative, Contractor may rely on a self-insurance program to meet these requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code, and is authorized as a legally sufficient self-insurance program by the State of California. In such case, excess Worker's Compensation Insurance with limits of not less than five million dollars (\$5,000,000) shall be maintained.
- (3) The insurer, if insurance is provided, and the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City of Daly City for loss arising from worker injuries sustained under this agreement.

(b) General Liability and Property Damage Insurance:

The Contractor shall take out and maintain during the life of the Contract such general liability and property damage insurance as shall protect the Contractor and any subcontractor performing work covered by the Contract, for claims, whether by the City, its subsidiary districts, the Agency, their employees, or by others for damages for personal injury, death, or to property, which may arise from the Contractor's operations under the Contract, whether such operations be by the Contractor or by any subcontractor or by anyone directly or indirectly employed by either of them and the amounts of such insurance shall be as follows:

- (1) General Liability Insurance: Contractor, at Contractor's own cost and expense, shall maintain Commercial General Liability insurance for the period covered by this agreement in an amount not less than one million dollars (\$1,000,000) combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least two million dollars (\$2,000,000). Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom.
- (2) Property damage Insurance: Contractor, also at Contractor's own cost and expense, shall maintain Property Damage Insurance in an amount not less than five hundred thousand dollars (\$500,000) on account of one accident or incident, in the form commonly known as "broad form property damage coverage". A deductible that does not exceed \$5,000 may be provided.

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy(ies):

- a. The City of Daly City, its subsidiary districts, the Agency and their officers, officials, employees, volunteers and agents are to be covered as insureds as respects each of the following: Liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired, or borrowed by Contractor, The coverage shall contain no special limitations on the scope of protection afforded to Daly City, its subsidiary districts, the Agency and their officers, officials, employees, volunteers and agents..
- b. The insurance policy form shall provide coverage on an occurrence basis, and not on the basis of claims made.
- c. The insurance must cover complete contractual liability. This may be provided by amending the definition of "incidental contract" to include any written agreement. Separate endorsement is required if the contractual liability coverage is not included within the general liability coverage. There shall also be an endorsement that shall specify or be endorsed to provide that thirty (30) days notice must be given, in writing, to the Engineer of any pending cancellation of the contractual liability coverage.
- d. Any explosion, collapse, and underground property damage exclusion must be deleted.
- e. An endorsement must state that coverage is primary insurance and that no other insurance or self-insured retention carried by the City of Daly City, its subsidiary districts, or the Agency will be called upon to contribute to a loss under the coverage.
- f. The policy must contain a cross liability or severability of interests clause.
- g. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City of Daly City, its subsidiary districts, the Agency and their officers, officials, employees, volunteers and agents.
- h. Insurance is to be placed with California-admitted insurers, and carrier(s) must be rated "A" or above in the *Best's Rating Guide*. The City reserves the right to accept or deny use of any particular carrier.

- i. Notice of cancellation or non-renewal must be received by the City Engineer's office at least thirty (30) days prior to such change. The Cancellation Clause on the Certificate of Insurance needs to cross-out "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."
- j. Liability for Medical Expenses is required to cover up to \$10,000 for any one person.
- k. Contractor is to include all subcontractors as insureds under its policies, or provide the City with certifications and endorsements for each subcontractor, with all coverage stated above applying as well.
- l. Products and Completed Operations (Products-Comp/Op Agg) should cover up to \$1,000,000, covering bodily injury and property damage for injuries for defective construction or installation after completion of the construction contract.
- m. Excess liability, if used to meet required coverage, must be of the umbrella form.
- n. Any exceptions to the above requirements, limits or conditions are to be made upon the sole and exclusive discretion of the City of Daly City, by and through the City's Risk Manager.

(c) Automobile Public Liability and Property Damage Insurance:

If and whenever the Contractor or any subcontractor, in carrying on the contract operation, shall use and operate automobiles, trucks or other vehicles on public streets and highways, each shall carry, at his own expense, automobile public liability and property damage insurance, with limits of not less than five hundred thousand dollars (\$500,000) for any one person, and one million dollars (\$1,000,000) for any one (1) accident, and three hundred thousand dollars (\$300,000) property damage, or one million dollars (\$1,000,000) combined single limit.

The term "*public streets and highways*" shall be deemed to include without limiting the generality thereof, all roads, roadways, and thoroughfares used for access to the site of the work.

Automobile Liability and Property Damage Insurance needs to cover "*Any Auto*" or the combination of "*All owned Autos*", "*Hired Autos*" and "*Non-owned Autos*".

(d) Additional Insureds:

All policies of insurance, for coverage required under subsections (b) and (c) above, shall name the City of Daly City, its subsidiary agencies as identified by City, their officers, officials, employees, volunteers and agents as additional insureds.

Policies shall provide coverage to each of the insureds with respect to said work. Both bodily injury and property damage insurance must be on an occurrence basis, and said policy shall provide that the coverage afforded thereby shall be primary coverage to the full limit of liability stated in the declarations, and if the additional insureds have other insurance against the loss covered by said policy, that other insurance shall be excess insurance only.

Additional Insureds and Primary Coverage shall be confirmed by a separate endorsement to the Certificate of Insurance and shall be filed with the Engineer.

(e) *"Act-of-God"* Insurance:

The Contractor shall, if Bid Item for *"Act of God"* Insurance is awarded, obtain and maintain throughout the construction and guarantee periods, insurance, payable to the City to cover damage in excess of five percent (5%) of contract amount to facilities constructed under this contract caused by an *"Act of God"* as defined in the Public Contract Code Section 7105. A separate Bid Item is provided for this insurance premium when required. The amount of insurance shall be the full project cost, but shall not limit the Contractor's insurance coverage otherwise required herein. If *"Act of God"* Insurance is not awarded, the Contractor will not be responsible for *"Act of God"* coverage but all other requirements of insurance will apply.

(f) Builder's Risk Insurance.

The Contractor shall, if Bid Item for *"All Risk"* Builders Risk Insurance is awarded, obtain, pay for, and maintain this insurance which shall cover, but shall not be limited to, fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, flood, and earthquake. This insurance shall name the City, the Engineer, and the Contractor as insureds and shall include coverage, but not by way of limitation, for all damage or loss to the work and to appurtenances, to materials and equipment to be used on the project while the same are in transit, stored on or off the project site, to construction plant and temporary structure. Any additional site improvement costs or security costs required by the Insurer to maintain this coverage shall be the responsibility of the Contractor.

Such insurance may have a deductible clause not to exceed the below-listed limits:

- (1) Flood and earthquake deductible shall not exceed two percent (2%) of the amount of loss.
- (2) All other perils: Five thousand dollars (\$5,000).

(g) Claims for Personal Injury or Property Damage by Reason of Contractor's Operations.

Upon Contractor's receipt of a claim or notice of injury claiming personal injury or property damage by reason of Contractor's operations under the Contract, Contractor shall immediately, but in no event later than five (5) days thereafter:

- (1) Notify the claims division of Contractor's liability insurer of the claim or notice presented, informing the insurance carrier of the claimant's name, address and telephone number; and
- (2) Inform the claimant of the Contractor's liability insurance carrier on this project, including the insurance company's policy number, local address to where claims may be filed, and telephone number if available.
- (3) Contractor shall assist in the prompt investigation of any such claims; and to the extent such liability claims fall within Contractor's deductible (or self-insured retention), Contractor shall comply with Subchapter 7.5 of Title 10 of California Code of Regulations (Unfair Claims Settlement Practices Regulations).

No policy of insurance taken hereunder shall be subject to modification or cancellation except after written notice to the City Attorney, by certified mail, at least thirty (30) days prior to the date of such modifications or cancellation.

No payment will be made to the Contractor unless the provisions of these paragraphs have been complied with.

All policies and certificates shall be submitted for approval within ten (10) calendar days after notification of award of contract.

57. FAITHFUL PERFORMANCE AND PAYMENT (LABOR AND MATERIAL) BONDS

The Contractor simultaneously with execution of the Agreement, shall furnish a surety bond from an admitted surety insurer to secure the faithful performance of the contract for the work in an amount of one hundred percent (100%) of the contract price. The Contractor shall also furnish a bond from an admitted surety insurer to secure payment for all labor, material, equipment, and supplies furnished for the work in an amount equal to one hundred percent (100%) of the contract price.

The form of bond for labor and material shall be such that the City may proceed against the Contractor and the Contractor's sureties on the bonds immediately upon any default in payments for labor, material or supplies without waiting for the completion of the work and the accumulation of damages, and shall be in substantially the form as provided with the project specifications. The premium on all bonds shall be paid by the Contractor and the cost thereof shall be included in the bid prices stated in the proposal.

58. CONSENT OF SURETIES

All alterations, extensions of time, extra and additional work or other changes authorized by these specifications, or any part of the contract, may be made without securing the consent of the surety or sureties on the contract bonds.

59. ENGINEER AUTHORITY

The Engineer shall give all orders and directions contemplated under this contract and specifications relative to the execution of the work. The Engineer shall determine the amount, quality, acceptability, and fitness of the several kinds of work and materials which are to be paid for under this contract and shall decide all questions which may arise in relation to said work and the construction thereof. The Engineer's estimates and decisions shall be final and conclusive, except as herein otherwise expressly provided. In case any question shall arise between the parties hereto relative to said contract or specifications, the determination or decision of the Engineer shall be a condition precedent to the right of the Contractor to receive any money or payment for work under this contract affected in any manner or to any extent by such question.

The Engineer shall decide the meaning and intent of any portion of the specifications and of any plan or drawings where the same may be found obscure or be in dispute. Any differences or conflicts in regard to their work which may arise between the Contractor under this contract and other contractors performing work for the Owner shall be adjusted and determined by the Engineer.

All instructions, rulings and decisions of the Engineer will be made promptly and will be in writing if so requested, and all such instructions, rulings and decisions shall be final and binding unless formal protest is made by the Contractor.

In prosecuting any of the above provisions or in exercising any power or authority granted to the Engineer by the contract, there shall be no liability upon the Engineer or the Engineer's authorized assistants and agents, either personally or as an official of the City and its subsidiary agencies, it being understood that in such matters the Engineer acts as an agent and representative of the City and its subsidiary agencies.

The Contractor shall be aware that all direction, instructions, permission, inspection of work, and approvals would be by the City. Contractor shall transmit all submittals, warranties and bonds, proposals for changes, and pay estimates to City for review and processing. If the specifications indicate Architect, Engineer or Owner direction, instruction, permission, inspection, or approvals, delete the work "Architect", "Engineer" or "Owner" and insert the word "City".

60. PROHIBITED INTERESTS

No official of the City who is authorized in such capacity and on behalf of the City to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the City who is authorized in such capacity and on behalf of the City to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

61. INSPECTION

The authorized representatives and agents of the City shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

Inspectors, employed by the Engineer or by the City, shall be authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work on the project and to the preparation, fabrication, or manufacture of the materials to be used. An inspector is not authorized to revoke, alter, or waive any requirements of the specifications. The Inspector is authorized to call the attention of the Contractor to any failure of the work or materials to conform to the specifications and contract. The Inspector shall have the authority to reject materials or, in any emergency, suspend the work until any questions at issue can be referred to and decided by the Engineer.

The inspector will in no case act as superintendent or perform other duties for the Contractor, nor interfere with the Contractor's management of the work. Any advice which an inspector may give the Contractor shall in no way be construed as binding to the Engineer or to the City, or as releasing the Contractor from fulfilling all the terms of the Contract.

In case the Contractor refuses to suspend operations on verbal order, the inspector and/or Engineer giving such verbal order will then issue the order in writing to the individual in charge of the work for the Contractor. Any work done after the order to suspend work will not be accepted or paid for by the City.

The Contractor shall furnish the Engineer with every reasonable facility for ascertaining whether or not the work, as performed, is in accordance with the requirements and intent of the specifications and contract. The Contractor shall at all times and for any purpose permit the Engineer and any of the Engineer's representatives and representatives of the City to have safe access to the work and the premises used by the Contractor. The Engineer, Engineer's representatives, and representatives of the City shall at all times have access to all places where machinery or materials are being manufactured, produced or fabricated for use on the work, and shall have full facilities for determining that all such machinery or materials are being made strictly in accordance with the specifications and plans. The Contractor shall, whenever so requested, provide facilities and assistance for weighing or measuring any of the materials.

62. LAND AND RIGHTS-OF-WAY

Prior to the start of construction, the City shall obtain all land rights-of-way necessary for the carrying out and completion of work to be performed under this contract.

If through failure of the City to acquire right-of-way, the Contractor sustains loss which could not have been avoided by the judicious handling of forces, equipment and plant, there will be paid to the Contractor such amount as the Engineer may find to be fair and reasonable compensation for such part of the Contractor's actual loss, as, in the opinion of the Engineer, was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in accordance with the rates set forth in the current issue of the Department of Transportation publication entitled "*Labor Surcharge and Equipment Rental Rates*" in effect on the day the Notice Inviting Bids for the work is dated. Refer to Section 8.1.09, "*Right-of-Way Delays*," of the *State Specifications*.

Actual loss shall be understood to include no items of expense other than idle time of equipment at the rates above provided and necessary payments for idle time of workers, cost of extra moving of equipment, and cost of longer hauls, with no markup in any case for overhead or profit.

If performance of the Contractor's work is delayed as a result of the failure of the City to acquire right-of-way, an extension of time determined pursuant to the provisions of Section 30, "*Time For Completion and Liquidated Damages*," will be granted. No payment will be made for equipment not on the site of the work.

63. TEMPORARY WORK EASEMENTS

The engineer may obtain temporary easements for use by the contractor. It shall be the responsibility of the Contractor to restore the property to its original condition, acceptable to the Property Owner, at no cost to the City or Property Owner. The Contractor shall stay within the limits of the easement, and should he desire additional space, he shall make such arrangements as are necessary with the Property Owner, and provide the Engineer with a copy of the letter of agreement prior to any trespass.

64. WORK DONE BY OTHERS

The City reserves the right to do other work and to let other contracts for work contiguous to the work set forth in this contract.

In the event work is done by the City or by other contractors contiguous to work covered by this contract, the respective rights of the various interests involved will be established by the Engineer, and the Contractor shall afford the City and other contractors reasonable opportunity for the introduction and storage of their materials and for the execution of their work, and the Contractor shall properly connect and coordinate the Contractor's work with theirs.

If any part of the work under the contract depends for proper execution or results upon any other work, the Contractor shall inspect such work and promptly report to the Engineer any condition which might adversely affect the Contractor's work. The Contractor's failure to so inspect and report shall constitute an acceptance of the other work as fit and proper for the reception of the Contractor's work, except as to deficiencies which may develop in the other work after the execution of the Contractor's work.

65. BENEFICIAL USE

As a condition to partial payments made to the Contractor, the City shall have the right to make beneficial use of completed portions of the work prior to total project completion without prejudice to completion and final acceptance of the total project.

66. PAYMENT TO CONTRACTOR

Not later than the tenth (10th) calendar day of each month, the Contractor shall submit to City an invoice for payment of work completed during the preceding calendar month. The City shall make a Progress Payment to the Contractor on the basis of a duly certified estimate of work performed during the preceding calendar month under the contract. The estimate must be as approved by the City and shall only include materials, equipment, or supplies that have been tested and installed, as per plans. The City shall make said Progress Payment to Contractor not later than the last calendar day of the month in which the Invoice was submitted to City for payment of amount approved by the City. If City fails to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted payment request from Contractor, City shall pay interest to Contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.10 of the Civil Procedures Code. Any payment request determined by City not to be a proper payment request suitable for payment shall be returned to Contractor within seven (7) calendar days after receipt with reasons stated in writing as to why the payment request is not proper as per Section 20104.50 (c)(2) of the Public Contract Code.

The City shall retain ten percent (10%) of such estimated value of the work done, including Contractor's mobilization as part security for the fulfillment of the contract by the Contractor. When the value of project work equals \$500,000.00 or more, and at any time after fifty percent (50%) of the work has been completed, the Contractor may make written request to City to reduce the percentage of retention retained by City based on the estimate value of the work done. If the Engineer finds that satisfactory progress is being made, the City may reduce the total amount being retained from payment pursuant to the above requirements to five percent (5%) of the total estimated value of said work and may also reduce the amount retained from any of the remaining partial payments to five percent (5%) of the estimated value of such work. Retention proceeds withheld from any payment by City from the Contract, or by Contractor from any Subcontractor, shall be subject to Section 7107, Subsection (c)(1)(2)(3) of the Public Contract Code, which in part, provides that the retention withheld shall be released within sixty (60) days after the date of completion of the work of improvements. In the event of a dispute between City and Contractor, City may withhold from the final payment an amount not to exceed 150% (one hundred-fifty percent) of the disputed amount. For purposes of this Section, "completion" means any of the following:

- Occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by City, or its agent, accompanied by cessation of labor on the work of improvements.
- Acceptance by City, or its agent, of the work of improvement.
- After commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 (one hundred) days or more, due to factors beyond the control of the contractor.

Pursuant to Section 22300 of the Public Contracts Code, at the option of the Contractor, securities may be substituted for the money retained according to the following procedures.

At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency or with a State or federally chartered bank as the escrow agent who shall pay such monies to the Contractor upon satisfactory completion of the contract. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest on the monies.

Securities eligible for investment shall include those listed in Section 16430 of the Government Code, or 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 the Contractor and the City. The procedures for handling and the Agreement format providing the required security shall be consistent with those established in Section 10263 of the Public Contract Code.

All material and work covered by partial payments made shall thereupon become the sole property of the City, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the City to require fulfillment of all the terms of the contract.

The contractor agrees to indemnify and save the City, its subsidiary districts, the Agency, and their officers, agents, employees, and servants harmless from all claims growing out of the lawful demands of the subcontractors, laborers, workers, mechanics, material suppliers, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the furtherance of the performance of this contract. The Contractor shall, at the City's request, furnish satisfactory evidence that all obligations of the nature hereinabove designated have to be paid, discharged, or waived. If the Contractor fails to do so, then the City may, after having served written notice on the said Contractor, either pay unpaid bills, of which the City has written notice, direct, or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of this contract, but in no event shall the provisions of this sentence be construed to impose any obligations upon the City to either the Contractor or the Contractor's Surety.

In paying any unpaid bills of the Contractor, the City shall be deemed the agent of the Contractor, and any payment so made by the City, shall be considered as a payment made under the contract by the City to the Contractor, and the City shall not be liable to the Contractor for any such payment made in good faith.

No payment or partial payment will be made for materials delivered on site, and not installed as per plans.

Whenever the Contractor shall deem all work under the contract to have been completed in accordance therewith, the Contractor shall so notify the Engineer who will promptly ascertain whether such be the fact, and if not will so notify the Contractor in detail of any additional work required. When all the provisions of the contract have been fully complied with to the satisfaction of the Engineer, the Engineer will proceed with all reasonable diligence to measure all work done and all material furnished and will make a final and complete estimate of the value of such work done and materials furnished and will certify to the City Council said estimate and the date of completion of the work. The Council will take prompt action thereon and will furnish the Contractor with a statement of acceptance or of exceptions.

At thirty-five (35) calendar days after the date of filing of notice of final completion of the work, the difference between said final estimate and all payments and accrued interest, if applicable, theretofore made to the Contractor shall be due and payable to the Contractor, excepting only such sum or sums as may lawfully be withheld in accordance with said final estimate shall operate as and shall be a release to the City, its subsidiary agencies their officers, agents, and employees from all claims withheld, and for anything relating to the work or any act or neglect of the City, its subsidiary agencies and their officers, agents, and employees, excepting only claims against the City for any amount withheld by it at the time of such payment.

67. PAYMENT FOR MOBILIZATION

Payments for mobilization shall be considered paid under various bid items, unless the City requires mobilization to be a separately stated bid item, in which case payment for mobilization will be as specified in the Special Provisions/Construction Details and as follows:

- (a) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, is five percent (5%) or more of the original contract amount, fifty percent (50%) of the contract item price for mobilization or five percent (5%) of the original contract amount, whichever is the lesser, will be included in said estimate for payment.
- (b) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, is ten percent (10%) or more of the original contract amount, the total amount earned for mobilization shall be seventy-five percent (75%) of the contract item price for mobilization or seven and one half percent (7.5%) of the original contract amount, whichever is the lesser, and said amount will be included in said estimate for payment.
- (c) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, is twenty percent (20%) or more of the original contract amount, the total amount earned for mobilization shall be ninety-five percent (95%) of the contract item price for mobilization or nine and one half percent (9.5%) of the original contract amount, whichever is the lesser, and said amount will be included in said estimate for payment.
- (d) When the monthly partial payment estimate of the amount earned, not including the amount earned for mobilization, is fifty percent (50%) or more of the original contract amount, the total amount earned for mobilization shall be one hundred percent (100%) of the contract item price for mobilization or ten percent (10%) of the original contract amount, whichever is the lesser, and said amount will be included in said estimate for payment. Any remainder will be paid Contractor at close of the job.

The contract price paid for mobilization shall include full compensation for furnishing all labor, materials, tools, and equipment necessary for mobilization as specified herein.

68. WITHHOLDING PAYMENTS

The City may withhold "Plan Approval" or nullify the whole or any part of any partial or final payment to such an extent as may be reasonably necessary to protect it from loss on account of:

- (a) Defective work not remedied, irrespective of when any such work be found defective;
- (b) Claims or liens filed or reasonable evidence indicating probable filing of claims or liens;
- (c) Failure of the Contractor to make payments promptly for labor, materials, equipment, or other facilities, or to subcontractors;
- (d) Failure of the Contractor to submit required paperwork in accordance with applicable labor codes and laws;
- (e) Failure of Contractor to provide proper payment of wages and fringe benefits;

- (f) Failure of Contractor to maintain during the course of the project, a current Daly City Business License whose value is equal to the total accumulated gross receipts for ALL work done in Daly City;
- (g) Failure of Contractor to keep "As-Built" plans current during course of project;
- (h) Failure of Contractor to deliver complete "As-Built" plans to Engineer at completion of construction;
- (i) Failure of Contractor to provide required "As-Built" Grade Certificates to City;
- (j) A reasonable doubt that the work can be completed by the City for the balance then unearned by the Contractor in the event the City at that time elects to terminate the contract under, "Right of the City to Terminate Contract," or to take over work under, "Failure to Complete Work" as specified elsewhere in this section.
- (k) A reasonable doubt that the Contractor will complete the work within the agreed time limits;
- (l) Costs to the City resulting from failure of the Contractor to complete the work within the proper time;
- (m) Damage to other work or property;
- (n) Failure to make proper submissions as herein specified;
- (o) Failure to keep work progressing in accordance with schedule, or to maintain or submit "As-Built" drawings;
- (p) Failure to preserve property and maintain safety during contract work operations;
- (q) Any other costs incurred by the City in connection with the project.

Whenever the City, in accordance herewith, withholds any monies otherwise due under the contract, written notice of the amount withheld and the reasons therefor will be given to the Contractor and when the Contractor removes the grounds for such withholdings, the City will promptly pay to the Contractor the amount so withheld.

#### 69. FINAL PAYMENT - EFFECT THEREOF

Payment of the undisputed contract amount is made contingent upon the Contractor furnishing to the City unconditional release of all claims against the City arising by virtue of this contract relating to those amounts. Disputed contract claims in stated amounts may be specifically excluded by Contractor from the operation of the release. No payment, however, final or otherwise, shall operate to release the Contractor or the Contractor's Sureties from any obligation under this contract or the Performance or Payment Bond.

#### 70. SATISFACTION OF LIENS

Prior to judicial determination of any claim or claims or in accordance therewith, the City may apply any amount withheld to the payment and satisfaction of recorded liens or just claims against the Contractor or any subcontractors for labor and services rendered and material furnished. In so doing, the City shall be deemed the agent of the Contractor and any payment so made by the City shall be considered as a payment made under the contract by the City to the Contractor, and the City shall not be liable to the Contractor for any payment made in good faith; provided that such payment will not be made except by court order if the Contractor furnishes a bond satisfactory to the City to indemnify it against any lien or claim.

For timely Stop Notices, City will withhold funds from Contractor's payment in compliance with State Law.

71. PAYMENTS BY CONTRACTOR

The Contractor shall pay:

- (a) for all transportation and utility services not later than the twentieth (20th) day of the calendar month following that in which services are rendered,
- (b) for all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of the cost thereof, not later than the twentieth (20th) day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the project, and the balance of the cost thereof not later than the thirtieth (30th) calendar day following the completion of that part of the work in or on which such materials, tools, and equipment are incorporated or used, and
- (c) to each of Contractor's subcontractors, not later than the fifth (5th) day following each payment to the Contractor, the respective amounts allowed the Contractor on account of the work performed by Contractor's subcontractors to the extent of each subcontractor's interest therein.

72. RETENTION OF LEGAL RIGHTS

Inspection by the Engineer, or by any of the Engineer's duly authorized representatives, any order, measurement, or certificate by the Engineer, any order by the City for the payment of money, acceptance of any work or any extension of time, or any possession taken by the City shall not operate as a waiver of any provision of the contract, or any power therein reserved to the City, or any right to damages therein provided. Any waiver of any breach of the contract shall not be held to be a waiver of any other or subsequent breach.

The City reserves the right to correct any error that may be discovered in any estimate that may have been paid, and to adjust the same to meet the requirements of the contract and specifications. The City reserves the right to claim and recover by process of law, sums as may be sufficient to correct the error or make good any deficit in the work resulting from such error, dishonesty or collusion discovered in the work after the final payment has been made.

73. QUANTITIES OF ESTIMATE

Whenever the estimated quantities of work to be done and materials to be furnished on a unit price basis under this contract are shown in any of the documents including the proposal, they are given for use in comparing bids, and the right is expressly reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonably necessary or desirable by the City to complete the work contemplated by this contract, and such increase or diminution shall in no way vitiate this contract, nor shall any such increase or diminution give cause for claims or liability for damages.

Full compensation shall be considered as included in the prices of the various contract items included in the Bid Schedule, and no additional compensation shall be allowed, for any and all items of work in the drawings and/or specifications for which there is no bid item in the Bid Schedule.

74. CHANGES IN WORK

No changes in the work covered by the approved contract documents shall be made without having prior written approval of the City. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- (a) Unit bid prices previously approved.
- (b) An agreed lump sum.
- (c) Work by Force Account - the actual cost of:
  - (1) Labor, including foremen;
  - (2) Materials entering permanently into the work;
  - (3) The ownership of rental cost of construction plant and equipment during the time of use on the extra work;
  - (4) Power and consumable supplies for the operation of power equipment;
  - (5) Insurance;
  - (6) Social Security and old age and unemployment contributions.

*"Force Account"* is a term used when work is ordered by the Engineer to be done by a contractor without prior agreement as to cost thereof. Work done by Force Account shall become a part of the work of the duly authorized contracted work.

All work done on a Force Account basis will be paid for in the manner hereinafter described, and the compensation thus provided shall be accepted by the Contractor as payment in full for the use of small tools, superintendent's services, timekeeper's service, premium on bond, and all other overhead expenses incurred in the prosecution of all work done on a Force Account basis.

Payment will be made in accordance with Section 9-1.03, *"Force Account Payment"* of the *State Specifications*. The Contractor's timekeeper and the Inspector shall compare the records of extra work on a Force Account basis at the end of each day. Copies of these records will be made in duplicate by the Inspector and shall be signed by both the Inspector and the Contractor's timekeeper, one (1) copy being forwarded respectively to the Engineer and the Contractor.

The City reserves and shall have the right, by the Engineer's written order, to make increases, decreases, omissions or other changes, from time to time, in the plans or in the character or quantity of the work, provided such alterations do not change the total cost of the project, based on the originally estimated quantities and the contract unit prices, by more than twenty-five percent (25%), and provided further that such alterations do not change the total estimated cost of any major item, based on the originally estimated quantities and the contract unit price by more than twenty-five percent (25%). A major item shall be any item of which the total cost is equal to or greater than ten percent (10%) of the total contract price, computed on the basis of the originally estimated quantity and the contract unit price. Should it appear to the City to be desirable to make changes in excess of that herein permitted, the same shall be covered by supplemental agreement.

The Contractor shall not start work on any alteration requiring a supplemental agreement until such an agreement, setting forth the adjusted prices, has been executed by the City and the Contractor.

#### 75. CORRECTION OF WORK

All work, all materials, whether incorporated in the work or not, all processes of manufacture, and all methods of construction shall be at all times and places subject to the inspection of the Engineer who shall be the final judge of the quality and suitability of the work, materials, processes of manufacture, and methods of construction for the purposes for which they are used. Should they fail to meet the Engineer's approval, they shall be forthwith

reconstructed, made good, replaced and/or corrected, as the case may be, by the Contractor at the Contractor's expense. In no way shall the Engineer's approval of construction methods be construed as assurance that the end product will comply with the design requirements. Rejected material shall immediately be removed from the site. If, in the opinion of the Engineer, it is undesirable to replace any defective or damaged materials or to reconstruct or correct any portion of the work injured or not performed in accordance with the contract documents, the compensation to be paid to the Contractor hereunder shall be reduced by such amount as in the judgement of the Engineer shall be equitable.

The Contractor shall promptly remove all work condemned by the Engineer as failing to conform to the contract and shall promptly replace and re-evaluate such work in accordance with the contract and without additional expense to the City, and shall bear all costs of making good any work destroyed or damaged by such removal or replacement.

Any materials condemned or rejected by the Engineer as not meeting the requirements of these specifications may be branded or otherwise marked by the Engineer and shall, on demand, be at once removed by the Contractor to a satisfactory distance from the work. If the Contractor does not remove such material within a reasonable time, fixed by written notice, the City may remove and store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten (10) days thereafter, the City may, upon ten (10) days written notice, sell such materials at auction or at private sale. The City will account for the net proceeds thereof after deducting all the costs and expenses that should have been borne by the Contractor.

Contractor shall have no more than 30 calendar days from Notice of Correction or "*Punch List*" to correct all deficiencies listed in such notice, unless otherwise specified. If all required corrections are not completed in the specified time frame, the City may complete such deficiencies or accept the defective work subject to an equitable deduction from the contract price which may be made therefor by the City.

Reexamination of any work may be ordered by the Engineer at any time prior to final acceptance, and if so ordered, the work must be uncovered by the Contractor. If such work be found in accordance with the contract, the City will pay the cost of reexamination and replacement. If such work be found not in accordance with the contract, the Contractor shall pay such costs.

No partial payment, inspection, taking possession of, or other act made or done by the Engineer or the City with respect to the work prior to the final completion and acceptance thereof shall affect or prejudice the right of the Engineer or the City to reject any defective work or material or to require the complete fulfillment of all the provisions of the contract.

If the Engineer deems it expedient and not in the best interest of the City to correct work injured or done not in accordance with the contract, the defective work may be accepted subject to an equitable deduction from the contract price which may be made therefor by the City upon certificate from the Engineer.

#### 76. CLAIMS FOR EXTRA COSTS

No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the Engineer approved by the City, as aforesaid, and the claim presented with the first estimate after the changed or extra work is done. When work is performed under the terms of Section 66, "*Changes In Work*," of the General Conditions, the Contractor shall furnish satisfactory bills, payrolls, and vouchers covering all items of cost and, when requested by the City, give the City access to accounts relating thereto.

77. CLAIMS AND PROTESTS

If the Contractor considers any work demanded of the Contractor to be outside the requirements of the contract, or if the Contractor considers any instruction, ruling, or decision of the Engineer to be unfair, the Contractor shall, within two (2) working days after any such demand is made, or instruction, ruling, or decision is given, file a written protest with the Engineer, stating clearly and in detail, his objections and the reasons therefor. Except for such protests and objections as are made of record in the manner and within the time above stated, the Contractor shall be deemed to have waived all claims for extra work, damages, and extensions of time on account of demands, instructions, rulings, and decisions of the Engineer.

Upon receipt of any such protest from the Contractor, the Engineer will review the demand, instruction, ruling, or decision objected to and will promptly advise the Contractor, in writing, of the Engineer's final decision, which shall be binding on all parties, unless within two (2) working days thereafter, the Contractor shall file with the Council a formal protest against said final decision of the Engineer. The Council will consider and render a final decision of any such protest within thirty (30) calendar days of receipt of same.

All construction claims of \$375,000 or less shall be resolved in compliance with the provisions of Section 20104 of the Public Contract Code which requires that all claims be in writing and include the documents necessary to substantiate the claim. The City of Daly City or its subsidiary Agency shall respond in writing to any written claim within the following timeframe:

For claims of less than \$50,000:	45 Days
For claims of \$50,000 - \$375,000:	60 Days

78. SUSPENSION OF WORK

Should the City be prevented or enjoined from proceeding with work or from authorizing its prosecution either before or after its prosecution, by reason of any litigation, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay, but time for completion of the work will be extended to such reasonable time as the City may determine will compensate for time lost by such delay with such determination to be set forth in writing.

The Engineer may at any time, by notice in writing to the Contractor, suspend any part of the work for such period of time as may in his opinion be necessary to prevent improper execution of the work, and the Contractor shall have no claim for damage or additional compensation on account of any such suspension.

If it should become necessary to stop work for an indefinite period, the Contractor shall store all materials in such manner that they will not become an obstruction, nor become damaged in any way, and the Contractor shall take every precaution to prevent damage or deterioration of the work performed; the Contractor shall provide suitable drainage by opening ditches, shoulder drains, etc., and erect temporary structures where necessary.

79. UNANTICIPATED CONCEALED CONDITIONS

If the Contractor encounters a subsurface or other concealed condition, including hydrocarbons or toxics, which differ materially from those indicated in the City's Project Plans and Specifications, the Contractor shall promptly, and before this conditions is disturbed, notify the Engineer of this subsurface condition at the site and shall include indication of why this condition differs materially from those ordinarily encountered and generally recognized as inhering to work of the character provided for in this contract.

The Engineer shall investigate the site after receiving the notice. If the condition does materially affect performance of the contract:

- (a) The City may suspend further performance of work by the Contractor. A formal written notice shall specify the date and the estimated duration of the suspension. Any given suspension shall not exceed forty-five (45) consecutive calendar days, and the total of all suspensions shall not exceed ninety (90) calendar days. If suspensions not caused by, or caused in part by, the Contractor exceed these time periods, then the Contractor at its option may terminate this contract.
- (b) Upon receiving such notice, the Contractor shall promptly suspend further performance of the work, protect or store materials upon the site, take precaution to prevent damage or deterioration to the work already performed, provide suitable drainage and temporary structures or barriers where necessary.
- (c) For a suspension of work exceeding ten (10) working days, or where, in the opinion of the Engineer, the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for performing any part of the work under this contract, then the Contractor may submit a written request for an equitable adjustment to the contract. Any adjustment only shall be made upon approval by the Engineer, and by a formal Change Order issued by the City.
- (d) No request for equitable adjustment to the contract under this paragraph shall be allowed if either (1) the prior notice provisions of this Section are not provided by the Contractor to the Engineer, or (2) if the request for equitable adjustment is made after the final payment under this contract.
- (e) These provisions prevail over other differing Contract provisions or differing provisions of these General Conditions. If the Contractor and the Engineer are unable to agree upon an equitable adjustment, change order or extension of time for performance, Contractor's remedies are limited to a claim therefor; however, the City shall not be liable to Contractor for any claims, costs, losses or damages incurred, claimed or sustained by Contractor on or in connection with any other project or anticipated project or for claimed delay damages.

80. FINAL REVIEW/ACCEPTANCE OF PROJECT WORK

Contractor shall make a written request to the Engineer for a final review of the project work at least five (5) working days in advance of the proposed review date. Failure to comply with this section negates any date the Contractor has proposed for final review and acceptance of the project work.

The foregoing procedure also applies to completion of plant maintenance periods.

The date of completion of the project work shall be the date of formal acceptance of project completion by the City Council, or other duly authorized authority.

81. MUTUAL RESPONSIBILITY OF CONTRACTORS

If, through acts of neglect on the part of the Contractor, any other Contractors or any subcontractors shall suffer loss of damage on work, the Contractor agrees to settle with such other Contractor or subcontractors by agreement or arbitration if such other Contractor or subcontractors will so settle. If such other Contractor or subcontractor shall assert any claim against the City on account of any damage alleged to have been sustained, the City shall notify the Contractor, who shall indemnify, save harmless, and defend the City, its subsidiary agencies and their officers, officials, employees, volunteers, and agents against such claim.

82. GUARANTY

A. General:

Neither the final certificate of payment nor any provision in the contract documents nor partial or entire occupancy of the premises by the Owner shall constitute an acceptance of work not done in accordance with the contract documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship.

The Contractor hereby unconditionally guarantees that the work will be done in accordance with the requirements of the contract and further guarantees that work of the contract to be made and remain free of defects in workmanship and materials for a period of one (1) year from the date of acceptance by City of the contract, unless a longer guarantee period is specifically called for in the contract. The Contractor hereby agrees to repair or replace any and all work done, together with any other adjacent work which may have been damaged or displaced in so doing, that may prove to be not in accordance with the requirements of the contract, or that may be defective in workmanship or materials within the guarantee period specified, without any expense whatsoever to the City, ordinary wear and tear and unusual abuse and neglect excepted. Contract bonds shall remain in full force and effect during the guarantee period.

The Contractor further agrees that within ten (10) calendar days after being notified in writing by the Engineer of any work not in accordance with the requirements of the contract, or any defects in the work, the Contractor will commence and prosecute with due diligence, all work necessary to fulfill the terms of the guarantee and to complete the work within a reasonable period of time and in the event the Contractor fails to comply, the Contractor does hereby authorize said Engineer to proceed to have such work done, at the Contractor's expense, and the Contractor shall pay the cost thereof upon demand. The City shall be entitled to all costs, including reasonable attorneys' fees necessarily incurred upon the Contractor's refusal to pay the above costs.

Nothing in this section shall be construed to limit, relieve or release Contractor's, subcontractors' and equipment supplier's liability to the City for damages sustained as the result of latent defects in the equipment furnished caused by the negligence of the supplier's agents, employees or subcontractors. Stated in another manner, the warranty contained in this section shall not amount to, nor shall it be deemed to be, a waiver to the City of any rights or remedies (or time limits in which to enforce such rights or remedies) it may have against the supplier of the equipment to be furnished under these specifications for defective workmanship or defective materials under the laws of this State pertaining to acts of negligence.

83. EQUAL EMPLOYMENT OPPORTUNITY

No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Reference Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and Section 112 of Public Law 92-65.

All contractors directly participating in the City's project agree that, during and in connection with the associated agreement relating to the City's project, (1) they will comply, to the extent applicable, as contractors, subcontractors, lessees, suppliers, or in any other capacity, with the applicable provisions of the Regulations of the United States Department of Commerce (Part 8 of Subtitle A of Title 15 of the Code of Federal Regulations) issued pursuant to Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and will not thereby discriminate against any person on the grounds of race, color, or national origin in their employment practices, in any of their own contractual arrangements, in all services or accommodations which they offer to the public, and in any of their other business operations; (2) they will provide information required by or pursuant to said Regulations to ascertain compliance with the Regulations and these assurances.

The contractor will (1) ensure that minorities and women are given maximum employment opportunities for any training or employment made possible by or resulting from this contract, and (2) not discriminate against any employee or applicant because of race, color, religion, sex, or national origin and will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, or national origin. Such action shall include, but not be limited to employment, upgrading, demotion or transfer, recruitment or recruitment and selection for training, including apprenticeship. Reference Executive Order No. 11246; Department of Labor Regulation 41, CFR Chapter 60, as amended in 1978; and Title IV of the Civil Rights Act of 1965.

The contractor will (1) to the greatest extent feasible, give opportunities for training and employment to lower income residents of Daly City, and award contracts to business concerns located in or owned in substantial part by residents of Daly City; and (2) post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Employment Opportunity and Affirmative Action Program. Reference Section 3 of the Housing and Urban Development Act of 1968 as amended, 12 U.S.C. 17014.

Further, the contractor agrees to utilize Disadvantaged Business Enterprises (small, female, and minority businesses) whenever possible as sources of suppliers and services in contract work. The contractor shall take affirmative steps to assure the utilization of Disadvantaged Business Enterprises when procuring goods and services. Such steps shall include, but not be limited to, inclusion of Disadvantaged Business Enterprises on solicitation lists; division of total requirements into smaller tasks or quantities to permit maximum Disadvantaged Business Enterprises participation; establishing delivery schedules which will encourage participation by Disadvantaged Business Enterprises using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration as required. Reference Federal Procurement Standards, Attachment O, Circular No. A-102.

Non-compliance with the requirements of said Regulations and above stated assurances, by contractors, subcontractors, lessees, or suppliers, shall constitute a breach of their contractual arrangements with the City whereby said agreements may be cancelled, terminated, or suspended in whole or in part or may be subject to enforcement otherwise by appropriate legal proceedings.

NOTE: EXCEPT FOR CONTRACTS WITH FEDERAL FUNDING, PARTICIPATION IN AFFIRMATIVE ACTION PROGRAMS OR DBE PARTICIPATION WILL NOT BE CONSIDERED AS A BASIS FOR CONTRACT AWARD.

84. AREA AFFIRMATIVE ACTION PLAN

The Area Plan applicable to a given project shall be the San Mateo Plan for minority employment. Organizations subscribing to said plan include, but are not limited to, certain trades from the San Mateo County Building and Construction Trade Unions, and General Specialty Contractors Associations.

The Contractor's affirmative action plan shall specify at a minimum, the following workforce goals established for San Mateo County:

Minority .....	25.6% craft by craft
Female .....	6.9% craft by craft

NOTE: EXCEPT FOR CONTRACTS WITH FEDERAL FUNDING PARTICIPATION IN AN AFFIRMATIVE ACTION PLAN WILL NOT BE CONSIDERED AS A BASIS FOR CONTRACT AWARD.

85. PREVAILING WAGE

In accordance with Section 1770 of the California Labor Code, the City has ascertained and does hereby specify that the prevailing wage rates shall be those established by collective bargaining agreements between the duly recognized labor organizations and the employer associations covering the Daly City, San Mateo County labor rates for the particular craft, classification, or type of workers needed to execute the Contract as the same are on file with the Engineer. The said rates shall include all employer payments that are required by Section 1773.1 of the California Labor Code.

That further the City has ascertained from the Director of the Department of Industrial Relations, the general prevailing rate of per diem wages, and the general prevailing rate for legal holiday and overtime work for each craft needed in the execution of the contract. City will furnish to Contractor, upon request, a copy of such prevailing rates. It shall be the duty of the Contractor to post a copy of such prevailing wages at the job site. As used herein, "legal holiday" means such day as is recognized in the respective collective bargaining agreement.

The Contractor shall comply with Labor Code Section 1775. In accordance with said Section 1775, the Contractor shall forfeit, as a penalty to the City, fifty dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing rate for such work or craft in which said worker is employed for any work done under the contract by the Contractor or by any subcontractor under the Contractor, in violation of the provisions of the Labor Code, and in particular, Section 1770 to Section 1780, inclusive.

In addition to said penalty, and pursuant to said Section 1775, the difference between such stipulated prevailing wage rates and the amounts paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the stipulated prevailing rate shall be paid to each worker by the Contractor.

The wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein contained shall be construed as preventing the Contractor from paying more than the minimum set forth.

No extra compensation whatever shall be allowed by the City due to inability of the Contractor to hire labor at the minimum rate nor for any necessity for payment by the Contractor for subsistence, travel time, overtime, or other added compensation, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing the bid.

If it becomes necessary to employ a craft other than those listed, the Contractor shall notify the City immediately and the City will determine the additional prevailing rate from the Director of the Department of Industrial Relations and the rate thus determined shall be applicable as a minimum at the time of initial employment.

The Contractor shall pay travel and subsistence payments to workers needed to execute the work as such travel and subsistence payments are defined in the applicable collective bargaining agreement filed with the Department of Industrial Relations pursuant to Labor Code Section 1773.8.

86. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with Federal clean air and water standards during the performance of this contract and specifically agrees to the following:

- (a) The Contractor agrees to comply with all applicable State regulations including those promulgated by the State Water Resources Control Board, the Regional Water Quality Control Board, and the Bay Area Air Quality Management District.;

- (b) The term "facility" means (1) any building, plant, installation, structure, mine, vessel, or other floating craft, location or site of operations, (2) owned, leased, or supervised, (3) by the Contractor and subcontractors, (4) for the construction, supply and service contracts entered into by the Contractor;
- (c) That any facility to be utilized in the accomplishment of this contract is not listed on the Environmental Protection Agency's List of Violating Facilities pursuant to 40 CFR, Part 15.20;
- (d) That in the event a facility utilized in the accomplishment of this contract becomes listed on the EPA list, this contract may be cancelled, terminated or suspended in whole or in part;
- (e) That it will comply with all the requirements of Section 114 of the Air Act and Section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308, respectively, and all regulations and guidelines issued thereunder;
- (f) That it will promptly notify the Government of the receipt of any notice from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility utilized or to be utilized in the accomplishment of this contract is under consideration for listing on the EPA list of Violating Facilities;
- (g) That it will include the provisions of paragraphs "a" through "g" in every subcontract or purchase order entered into for the purpose of accomplishing this contract, unless otherwise exempted pursuant to the EPA regulations implementing the Air or Water Act (40 CFR, Part 15.5), so that such provisions will be binding upon each subcontractor or vendor;
- (h) That in the event that the Contractor or the subcontractors for the construction, supply and service contracts entered into for the purpose of accomplishing this contract were exempted from complying with the above requirements under the provisions of 40 CFR, Part 15.5(a), the exemption shall be nullified should the facility give rise to a criminal conviction (See 40 CFR, Part 15.20) during the accomplishment of this contract. Furthermore, with the nullification of the exemption, the above requirements shall be effective. The Contractor shall notify the Government, as soon as the contractor or subcontractor's facility is listed for having given rise to a criminal conviction noted in 40 CFR, Part 15.20. (40 CFR, Part - Various: Available for Review at office of City Engineer)

The Contractor shall comply with all State, special district, or other public entity air pollution control rules, regulations, ordinances, and statutes which apply to any work performed pursuant to the contract, including any air pollution control rules, regulations, ordinances and statutes specified in Section 11017 of the Government Code and any amendments thereto.

Attention is directed to Sections 7-1.01F, "*Air Pollution Control*," and 7-1.01G, "*Water Pollution*," of the *State Specifications* and any amendments thereto.

#### 87. STORMWATER POLLUTION PREVENTION REQUIREMENTS

The Contractor shall comply with the City's NPDES Stormwater Waste Discharge permit #CA0029921 for discharges to the storm drain system, including the adherence to all applicable Best Management Practices to prevent pollutants, including sediment, from entering the storm drains.

In order to further prevent stormwater pollution, for all construction contracts requiring surface cleaning; the Contractor or Subcontractor performing such cleaning either shall be a "Bay Area Stormwater Management Agencies Association (BASMAA)" recognized mobile cleaner, or shall utilize, to the greatest extent practical, BASMAA recommended equipment and pollution prevention practices for proper cleaning and washwater disposal, so that any water containing pollutants does not enter the City storm drain system.

In addition, as a minimum, to obtain a permit for contract construction work, the Contractor shall provide information relating to proposed storm stormwater pollution prevention practices on a questionnaire provided as part of Contractor's Permit Application.

88. SOUND CONTROL REQUIREMENTS

The Contractor shall comply with all local sound control and noise level rules, regulations, and ordinances which apply to any work performed pursuant to the contract.

Each internal combustion engine, used for any purpose on the job or related to the job, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without said muffler.

89. DUST ALLEVIATION AND CONTROL

The Contractor shall be responsible for and shall provide dust abatement and control measures satisfactory to the Engineer, continuously during the course of the work, including one or more watering trucks fully manned and operable.

90. NATIONAL HISTORIC PRESERVATION ACT OF 1966

The Contractor agrees to contribute to the preservation and enhancement of structures and objects of historical, architectural or archaeological significance when such items are found and/or unearthed during the course of project construction and to consult with the State Historic Preservation Officer for recovery of the items. (References available for review at office of City Engineer: National Historic Preservation Act of 1966, (80 Stat 915, 16 USC 470) and Executive Order No. 11593 of May 31, 1971.)

91. REQUIRED PROVISIONS DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

92. RIGHT OF THE CITY TO TERMINATE CONTRACT

In the event that any of the provisions of this contract are violated by the Contractor, or by any of the Contractor's subcontractors, the City may serve written notice upon the Contractor and the Surety of its intention to terminate the contract, such notices to contain the reasons for such intention to terminate the contract, and unless within ten (10) calendar days after the serving of such notice upon the Contractor, such violations or delay shall cease and satisfactory arrangement or correction be made, the contract shall, upon the expiration of said ten (10) calendar days, cease and terminate.

In the event of any such termination, the City shall immediately serve notice thereof upon the Surety and the Contractor, and the Surety shall have the right to take over and perform the contract; provided, however, that if the Surety does not commence performance thereof within ten (10) calendar days from the date of mailing to such Surety of notice of termination, the City may take over the work and prosecute the same to completion by contract or by force account for the account and at the expense of the Contractor, and the Contractor and Contractor's Surety shall be liable to the City for any excess cost occasioned by the City thereby, and in such event the City may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.

93. FAILURE TO COMPLETE WORK

In the event that the Contractor fails to perform any of the terms of the contract, the Contractor shall be in default and notice in writing will be served upon the Contractor by the City of such default, and should the Contractor neglect or refuse to comply with all the terms of the contract immediately, as specified in such notice, the City shall have the power to terminate all of the rights of the Contractor in such contract, but said termination shall not affect or terminate any of the rights of the City as against the Contractor or Contractor's surety then existing or which may thereafter accrue because of such default.

If the rights of the Contractor are terminated, as above provided, the City may, at the expense of the Contractor and Contractor's surety, complete the contract, or cause the same to be completed.

In the event of such termination, all monies due the Contractor under the terms of the contract shall be retained by the City, but such retention shall not release the Contractor or Contractor's surety from liability for the Contractor's default. In such event, however, the Contractor and Contractor's surety will be credited with the amount of money so retained toward any amount by which the cost of completion of the contract, as above provided in this section, exceeds the contract price.

The determination by the Engineer of the question as to whether the Contractor has failed to perform any of the terms of the contract shall be conclusive upon the Contractor, the Contractor's surety and any and all other parties who may have any interest in the contract or any portion thereof.

The foregoing provisions of this section shall be in addition to all other rights and remedies available to the City under the law.

94. OWNERSHIP OF WORK PRODUCT

Work products of the Contractor and/or subcontractors on this project, which are delivered under the contract or which are developed, produced, and paid for under the contract shall become the property of the City.

95. NONCOLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

In accordance with Section 7106 of the Public Contract Code, of the State of California as specified, the bidder shall submit an affidavit affirming that the bidder has not participated in various collusive activities. A bid not accompanied by, or which is made without such affidavit, or in violation thereof, will not be considered. If the bidder is a corporation, said affidavit shall be signed by a duly authorized officer of the corporation. This affidavit will be made part of and referenced in the contract of the successful bidder.

96. CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

As required by Section 1352 of Title 31 USC, Federal funds cannot be used for the purpose of lobbying individuals in order to obtain a contract award, a grant or loan, or any other cooperative agreement. To comply with this requirement, a certification is now included in the contract documents and must be signed by the construction contractor at the time a bid is submitted.

97. FIVE YEAR MORATORIUM ON NEW ASPHALT PAVEMENTS

In general, it is the City's standard policy that no trenching will be allowed on a City Street until a period of five calendar years has expired from the previous time of asphalt overlay. In any case, when trenching occurs on a city street, the method of pavement restoration shall be at the option of the Engineer, in accordance with the provisions of this section.

- A. Should trench excavation or cut in pavement become necessary on a street resurfaced within the last five (5) years, the method of pavement restoration, at the option of the Engineer, shall be as follows:
    - 1. Replace entire affected city block with Asphalt Concrete with thickness equivalent to that of existing, or;
    - 2. Asphalt Pavement
      - a. Transverse trenches (perpendicular to centerline) – replace existing pavement, six (6) inches of deep lift Asphalt Concrete:
        - i. For the full width of affected side of street, on Median Curb Divided streets, or;
        - ii. For the full width of street, on Non-Median Curb Divided streets.
      - b. Longitudinal trenches (parallel to centerline) – replace existing pavement six (6) feet beyond end of trench, with a minimum of six (6) inches of deep lift Asphalt Concrete:
        - i. For the full width of affected side of street, on Median Curb Divided streets, or;
        - ii. For the full width of street, on Non-Median Curb Divided street.
- or;
- 3. Cement Concrete Pavement Restoration shall be as specified by the City Engineer.

- End of Section -